A Larger Concept of Community

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Contents

Preface

We Americans are accustomed to thinking of governmental organization and of public administration in terms of three familiar levels of government. The traditional pattern is local, state, and national. These lectures will cut in between and over these accustomed levels. First, we shall give attention to that supralocal development, the metropolitan community. We shall then turn to the trans-state regional community. Finally, we shall look beyond national bounds to the international community. In all of these orientations we have difficult and challenging demands upon our vision, our courage, and our capacity for political organization and action which are of fateful importance. It may, I hope, be of some value in achieving proper perspective, if nothing more, to consider these intermediate and transcendent community levels in terms of the governmental organization of society.

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Philadelphia, Pennsylvania
October 16, 1955

A LARGER CONCEPT OF COMMUNITY

I

The Local Community

IT IS THE GENIUS of a democratic community that the highest values are associated with the dignity and integrity of the individual in an organized group characterized by substantial common interests and a like degree of co-operation.

One need not labor here the important but obvious interdependence of men in contemporary society. Plainly, it accentuates the need of group organization and of a high order of human co-operation. What I am concerned with is the potentialities of the community structure of society for the positive mission of providing maximum opportunity for individual development and expression while effectively promoting the common good. Within this structure is a tremendous range of community units—from the tiny neighborhood groups, devoid of political arrangements but strongly bound by social and economic ties, to an immense international association such as the United Nations or the Atlantic Community.

By way of description I suggest that a commu-

nity is characterized by at least the following elements:

1. A group or groups of people.
2. Some sort of geographical orientation.
3. Some one or more substantial interests in common.
4. A state of mind which may be called a sense of community.

Beyond this there is enormous variety. What may be a community for one purpose may not be for another. The term "community" plainly does not denote self-sufficiency. There may be a congeries of lesser communities within a rough hierarchy of larger communities. A community may be substantial and populous and yet not be politically organized.

A major problem of our complex contemporary society is how to preserve the values associated with the small community unit at the same time that we organize effectively in the larger community orientation. We like to keep government close to the people—to give the common man a sense of participation. How shall we do this when even local communities have become so large that big government seems inescapable?

The resolution of the difficulty should proceed, I suggest, from a recognition of the proposition that there can be unity in diversity, that for

human affairs to which they are appropriate, very small community units may be fostered at the same time that we seek integration on a much larger community basis for purposes appropriate to the larger group. So in a metropolitan area we might resort both to atomization and integration as compatible elements of a coherent program.

One of our persistent difficulties arises from a too weak attachment to democratic values. This is conspicuous in our local communities. There is a marked tendency toward conformity and segregation. One finds residential groupings along racial lines in large northern cities as well as in the South. Differences in economic position make for segregation, especially in residential areas. It is now evident that, through stress on the economic factor, zoning ordinances serve as instruments of segregation. Thus a suburban community will seek a detached, rather exclusive situation by excluding practically all save residential land uses and by imposing restrictions which go beyond the police-power objectives of zoning. In a recent Missouri case a requirement of three-acre lots in the most restricted residential zone was upheld.[1] This type of provision has great snob appeal and tends to achieve segregation along that line. A yet more recent Pennsylvania decision drew the line on a different kind of zoning requirement with a similar thrust. The ordinance, which was invalidated,

specified minimum floor areas for residences and set higher minima for the more restricted zones. The police-power objective was adequate space for healthful occupancy; no more is needed in a fancy zone than in a modest one.[2]

These things are matters of rather basic social values. If what we want is exclusiveness and our wishes are strong enough to prevail what we shall get will be an undemocratic community pattern.

There is a vital necessity that we preserve great flexibility in our thinking about community organization and development as well as in our actual governmental arrangements at the same time that we plan with maximum thoroughness and foresight for the better organization of society. This observation proceeds from a recognition of the thoroughly nonstatic character of human affairs. It is a question whether man has influenced his environment by science and technology more than man-made developments have influenced him. Certain it is that he has presented himself with extraordinarily interesting and difficult problems of adjustment, problems he must meet on the run as the very problems themselves change or merge into new problems.

I am aware that if this point is made graphically enough it is almost certain to provoke the observation that it really leads to a philosophy of improvisation—so much so that talk of planning

in the long view is to be described as utterly vain. The answer is that we are not talking in terms of absolutes. As a relative matter, we can exercise a quality of foresight which deserves a better characterization than "expediency." Each generation must meet its own problems. What it owes to the next is to act with all the foresight and imagination it can muster.

It is this compelling need of flexibility that renders suspect any basic rigidity in local governments, whether it be in territorial jurisdiction, in structure, or in distribution of governmental powers.

We Americans have tied our thinking about governmental organization and administration too closely to fixed geographical areas. Man's interests and activities pay scant heed to lines on a map. Yet we are content to rely heavily on area representation in legislative bodies. We have established and keep in being a congeries of local jurisdictions which rest upon the land in a largely rigid pattern neither presently fitted nor readily adjustable to the actual community groups or units. Somehow this must be relaxed.

There is occasion to speak of the interdependence of governmental units. We have belatedly begun to give serious attention to problems of intergovernmental relations. Approached broadly, the subject is closely related to the fundamental

matter of working out an effective distribution of governmental powers and responsibilities. In more limited terms, it relates to intergovernmental cooperation as a *sine qua non* in meeting human problems which are not confined within particular jurisdictional limits.

It should serve our purpose at this juncture to make use of a few illustrations of interdependence in various patterns of intergovernmental relations. A state must rely heavily upon local units in many important respects. Enforcement of state law in urban communities rests primarily upon municipal police. In the larger sense all streets are parts of the total highway system of the state. Public education is a state affair but local responsibility for school administration with state financial aid and some measure of supervision is the order of the day.[3]

Under state law a city may depend upon the county or parish for both assessment and collection of ad valorem taxes. In some communities it will look to the county for public health services. There has been a trend toward county administration of public health as well as welfare and correction functions.[4] A county, for its part, will look to the city for protective and other urban services needed for county facilities located in the city as well as for a street system which permits the requisite freedom of movement.

The states are dependent one upon another in numerous respects. The establishment of a good pattern of connecting highways is one example; law enforcement is another—every state depends upon the co-operation of all the rest for the extradition of fugitives from justice. Problems such as pollution of interstate streams demand either federal action or the co-operation of several states for their solution. The downstream folk are in a bad plight without the co-operation of their upstream neighbors.

Federal-state and federal-local relations have attracted particular attention in recent years. Many people embrace the view that there has been a very disturbing trend toward centralization of authority in the federal government at the expense of state and local autonomy. They are concerned that there has been federal aggrandizement of power both by direct exertion of governmental authority and by employment of the leverage of federal funds. I am not presently evaluating this point of view. I am simply noting its existence and the fact that it has had some influence. One of the tasks of the Federal Commission on Intergovernmental Relations is to pursue the question whether there has been federal invasion of the appropriate spheres of the state and local units.

It will be recalled that the commission was created by act of Congress in 1953 and was charged

to make its final report by March 1, 1954. How it could have been expected to do a thorough job in so short a time is not at all clear. One may surmise that there was not sufficient awareness in Congress of the size and difficulty of the task. It was disconcerting, moreover, that groups jealous of the immunity of the income from state and local bonds from federal taxation succeeded in having the measure so modified, in the course of Congressional consideration, to exclude intergovernmental tax immunities from the scope of the commission's inquiry. The topic was plainly germane to the inquiry, particularly since there was avowed stress on intergovernmental fiscal relations; it should not have been excluded.

The tribulations of the commission are matters of public information. There was no prospect that it could accomplish its mission in the allotted time. On March 1, 1954, the President signed a measure giving it until March 1, 1955, to file its final report. One can but hope that despite its inauspicious beginning, the commission succeeded in completing a thorough, objective study.[5]

In the meantime, I shall not prejudge the case. It is much in order to caution others not to do so. It may well be that adequate study will strongly support the conclusion that this or that adjustment should be made in order to maintain a sound balance in our federal system. It is extremely un-

wise, however, to assume that a case is necessarily going to be made for a broad shift of authority and activities from the federal government to the states and their local units. I say this because, in my view, we are not talking about areas of black and white. We must bear in mind that it is unsafe to characterize governmental powers and functions as inherently general or local in nature. One may suggest, further, that the interdependence of governmental units in the larger scheme of things may bespeak adjustments within a framework of cooperation rather than an outright shift from one unit to another.

Again, it is numbing to one's political perceptions to attack the problems of distribution of governmental powers and responsibilities with slogans. To speak of the Tennessee Valley Authority and its work as "creeping socialism" is worse than obfuscation; it is indiscriminate criticism by slogan. "States' rights" is equally obscure. To use the parlance of the semanticist, the term has an emotive function but it is not a good tool of communication. As our history amply discloses, "states' rights" has, down the years, been the plea of the most disparate economic and political groups, which have had in common only the belief that the federal government was doing something to which they were opposed.

I make bold to offer one further cautionary

observation. Where the real objection to federal activity in a given field is that government as such should leave the field to private enterprise, the case should be presented squarely on that basis. I discern some tendency to hide such objectives under the announced purpose of restoring state and local autonomy.

The federal government is superimposed, in a sense, upon the state and local structure. The primary system of law and administration governing human relations is that of the states and their local units. The central government acts, beyond this, to pursue federal objectives. The immediate point is that there is vital interdependence. The postal establishment, for example, provides indispensable service to governments as well as individuals; it could serve neither without the benefit of the public facilities and services afforded by state and local governments. This is but one obvious example. Over the years less conspicuous matters have been the subjects of intergovernmental co-operation. A corporation engaged in an interstate business gets its franchise and legal status from a state. It gets protection of its properties from state and local governments. Its business is regulated and protected by the federal government.

This suggests a potential for deliberate co-operation and it must be evident that the potential is being tapped. It is true that a good deal of this

has been going on with the inducement of federal funds. Even so, I think that in most instances the term "co-operation" is apt.

Human interests and the problems of government cannot be separated, with neat precision, into fixed areas of governmental jurisdiction. Thus, in addition to the primary interdependence of the different levels of government, there are important interstices which call for intergovernmental co-operation. This is strikingly illustrated in the horizontal pattern by a recent New Jersey zoning decision.[6] A municipality adopted an amendatory zoning ordinance permitting construction of a shopping center in a residential area on a tract bordering three other municipalities. This was done over the protest of the latter on the ground that neighboring residential land uses in their jurisdictions would be adversely affected. They successfully attacked the ordinance in court. Said Chief Justice Vanderbilt:

> The appellant spells out from the language of the Constitution and statutes that the responsibility of a municipality halts at the municipal boundary lines without regard to the effect of its zoning ordinances on adjoining and nearby land outside the municipality.
>
> Such a view might prevail where there are large undeveloped areas at the borders of two

contiguous towns, but it cannot be tolerated where as here the area is built up and one cannot tell when one is passing from one borough to another. Knickerbocker Road and Massachusetts Avenue are not Chinese Walls separating Dumont from the adjoining boroughs.

At the very least Dumont owes a duty to hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes and to give as much consideration to their rights as they would to those of residents and taxpayers of Dumont.

To do less would be to make a fetish out of invisible boundary lines and a mockery of the principles of zoning.

In the vertical system of governmental units we observe various methods of filling the gaps. There is no general body of federal private law. Thus, when by the Federal Tort Claims Act the government waived sovereign immunity to tort liability and suit (subject to a number of important exceptions), it borrowed the tort law of the state where the conduct giving rise to tort liability occurred.[7] If the government acquires exclusive jurisdiction of a body of land in a state, for military purposes, for example, the federal courts will consider that the standing private law of the state

continues in effect in the area until Congress ordains to the contrary; otherwise there would be an unhappy legal vacuum.[8]

In our thinking about the structure of urban units of local government we have achieved considerable flexibility, far more so in general than has been true with respect to the governments of counties and parishes and those of predominantly rural units like townships. Great flexibility is possible under the familiar optional-charter device as well as under a system of municipal home rule. The Optional County Government Law of New York is an excellent example of the former.[9] It permits choice by local referendum of any of four standard forms of county government with many variations. New Jersey deliberately rejected home rule in 1947 but made a liberal constitutional declaration in favor of local autonomy.[10] Since then the state legislature has adopted a flexible optional-charter law.[11]

In a very laudable desire to assure appropriate local autonomy we have written so-called municipal home-rule provisions into nearly half of the state constitutions. The home-rule terminology is usually employed to signify the local framing and adoption of charters of government; the actual extent of local autonomy in either structure or powers of government varies greatly from state to state. Provision for county home rule exists in

some half-dozen states, but the strength of the movement derives from urban communities, especially the larger ones. While revulsion from the extreme of complete legislative supremacy over local government is understandable, there is a real danger of inflexibility in a home-rule system which involves a constitutional distribution of substantive powers of government between the state and its local units.

I am prepared to maintain the thesis that the most vital requisite for true home rule is a favorable climate of opinion for local autonomy. I am referring to a general popular interest in local autonomy and more particularly to a favorable legislative and judicial outlook on the subject. There is ample evidence, for example, that a very generous constitutional grant of substantive home-rule powers can be seriously constricted by a hostile or a strict constructionist judicial attitude. On the other hand, if there is a deeply rooted political philosophy in a state which holds high the virtues of local autonomy, that philosophy may find expression in legislation having to do with local government quite apart from any constitutional provisions on home rule.

There is another consideration which should be taken into account at this point. Local autonomy does not necessarily consist in the authority to determine the very powers of the units of local

government. I prefer to think of the subject more in terms of both the freedom and the responsibility to determine local policy and to administer local affairs within the limits of power appropriately devolved upon the people of a community by the state.

A chief difficulty with constitutional home rule, in practice, has been our inability to give satisfactory application to the distinction between general and local concerns which some home-rule provisions have used as a means of determining the allocation of power between the state and the local units. This dichotomy I reject because it is based on what I consider the unwarranted assumption that governmental powers and functions are inherently either general or local in character. I also reject the thesis of some proponents of home rule that there should be a specification of home-rule powers in the state constitution. That approach not only tends toward greater rigidity but also is delusive because there is no assurance that we can anticipate all the substantial problems of distribution of power in this way.

I believe that a state can declare in its constitution a liberal policy regarding local autonomy without destroying the flexibility for which the dynamics of our society urgently call. Recently, in a draft of *Model Constitutional Provisions for Municipal Home Rule,* which I prepared for the

American Municipal Association, I expressed an approach to the problem of devolution of substantive powers, the principal sentence of which reads as follows: "A municipal corporation which adopts a home rule charter may exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute."[12]

What this proposal does is lay aside the general versus local-concern business and leave a charter municipality free to exercise any appropriate power not expressly denied to it by charter or general statute. The effect of this is to establish a strong policy in favor of local autonomy and, at the same time, to leave the state legislature free to make the adaptations and adjustments which the changing needs of the larger community may call for.

What has been said thus far has been largely to develop general ideas and set the stage. We come now to more specific consideration of the form of local community which calls most urgently for fresh imaginative thinking about community structure and organization.

A striking characteristic of contemporary

America is sprawling urbanization, sometimes called metropolitanism. This development of numerous great centers of population comprehending a large primary city and a complex of other local units and community nuclei within a major area of urbanization confronts us with an extraordinarily difficult and challenging problem of governmental organization and administration. It is a problem over which have been flung numerous palliatives, but which has been attacked with real vision in some instances. It is not to be suggested that even the most thorough and imaginative efforts have fully succeeded. Certainly the most I can hope to do here is to try to improve perspective and suggest approaches in the context of the short and long-range efforts which have thus far been made. It is my belief that metropolitanism urgently bespeaks an enlarged concept of the local community.

A grim external consideration with which we must reckon is the possibility of enemy attack. I discuss it with great diffidence. I am not qualified to deal properly with its military and civil defense aspects. I do venture to say that while this factor undoubtedly calls for some modification of strictly domestic thinking about metropolitanism, as by emphasizing the location and character of airports, the need of dispersal of vital industrial plants, and the need of a superior system of arterial streets geared to the external highway system, it does not

mean that our metropolises are to be pulled apart. On the contrary, thorough de-urbanization seems out of the question. We should not simply fold our tents in the face of danger, even if we could. But cities cannot, like individuals, run for cover.

The upshot of this is that military and civil defense are not likely to be controlling factors in the shaping of metropolitan life and government. Rather than militating against metropolitan government they call for appropriate metropolitan integration. It is obvious that the great metropolitan centers are likely target areas for enemy attack, and it must be almost equally evident that co-ordination and control on a metropolitan-wide basis are needed if civil defense is to be effective in minimizing the impact of an actual enemy attack.

When we turn to the domestic aspects of metropolitan problems, it should be said, at the outset, that there is scant reason to suppose that we can develop any one best method or approach which meets the needs of all metropolitan areas. The people of each great center are simply faced with their own manifestation of metropolitanism and they must meet their own problem on the realities of their larger community. Obviously, the experience, research, and reflection which have been drawn upon in other communities should be helpful, but by no means should it be assumed that they will provide the answer.

Full development of the topic of metropolitan

planning has no place in this discussion, but it does need to be said here that planning on a metropolitan basis, and by this is meant comprehensive governmental planning, which embraces all aspects of community life, is indispensable. Anything less is, at best, a piecemeal approach.

There are a number of devices which we have developed to overcome the handicaps imposed by our artificial, territorially rigid configuration of local governmental units which are indicative of genuine resourcefulness but which are, at best, inadequate. There is the tool of extraterritoriality. This is a useful short-range means of trying to relate governmental authority realistically to actual service or problem areas. Thus a primary city can be afforded some protection in the interest of sound outward growth if it is granted police control over subdivisional platting in a substantial belt lying around the city. This method has the serious limitation, however, that it is used only with respect to particular functions as distinguished from the interrelated general functions of local government. Moreover, it is not politically acceptable on more than a limited basis since it involves the exertion of important governmental authority over people who have no voice in the government which is acting.

Another means of providing urban-type governmental protection and services in suburban

and even rural areas is the interlocal sale of protective and other services under contract pursuant to an enabling statute. The contract method has a fairly obvious connection with extraterritoriality. It would not avail, for example, to provide for police protection on this basis without giving the police personnel the governmental authority to act in the area where the police protection is to be provided. The contract method is a useful tool, but it, too, appears to be, at best, only a piecemeal and stopgap attack on the governmental problems of metropolitanism.

A third method, which, despite considerable merit, must be classified as having only limited or secondary significance, is functional consolidation. Between two or more units of local government, integration of a particular function can be achieved by the process of jointly engaging in the activity under the authority of appropriate enabling legislation. Thus two medium-sized cities which are not far apart might find it advisable to operate together an airport which would serve the needs of both. This is but one of many examples of useful joint action. The inadequacy of the device from the standpoint of the needs of the metropolitan community, however, must be fairly evident. It involves fragmentation on a functional basis. In community scope, moreover, it is not likely to embrace an entire metropolitan community, since it

would not of itself cover the unincorporated areas within the total metropolitan district. The device presents some problems with respect to financing, especially self-liquidating financing. It is possible to work out a single management under functional consolidation, but we have devised no way of achieving unitary revenue-bond, that is, self-liquidating, financing for a functional consolidation project short of the creation of a new *ad hoc* unit of government which can serve as the borrower. In the ordinary case in which no *ad hoc* unit is created, the participating units have not found a way to borrow jointly.

In recent years we have resorted increasingly to the *ad hoc* or special-function mechanism to deal with the problems of local government which exceed the reach of existing conventional general-function units, and to facilitate the financing and the management of activities within the scope of the same units. We are not here concerned particularly with the second type of case.

There is no doubt that conceptually the *ad hoc* device can be used on a metropolitan-wide basis. For example, a metropolitan sewage district could be created to deal with sanitation on as wide a community basis as the actual problem and service area. It is very handy, of course, to be able to provide for a particular type of governmental activity or service on whatever basis seems desirable. An-

other very engaging aspect of the *ad hoc* device is its relative freedom from the strongly prevailing notions about limiting governmental authority to defined geographical areas. We have learned that such a unit as an authority concerned with the development of a river valley can be effectively set up on a basis which does not confine the scope of the unit within defined geographical limits.[13] This is a most interesting and suggestive development.

One of the principal advantages which has been said to characterize the *ad hoc* device is that, by use of such a mechanism, good business management can be assured with relative freedom from politics. This argument is pressed, for example, with respect to what are considered business-type activities such as the operation of off-street parking facilities. My response to this contention is that it proves entirely too much. Local government of any size is big business, and we need good management and efficiency throughout. If we cannot substantially achieve them, short of diffusing various functions among a variety of *ad hoc* units, we are indeed in a bad plight. I am not prepared to concede for a moment that a municipal service cannot be managed soundly and well within the general framework of municipal government. Nor is the *ad hoc* device perfect insulation in fact from so-called "practical politics." If particular activity is within the range of interest of the practical poli-

tician, there is no certainty that the creation of a special-function unit of government is going to deflect him.

A great many *ad hoc* units such as parking authorities are really adjuncts of a primary general-function unit, and it would appear that their justification must lie more in their usefulness in the total job of public administration than in insulation from the political forces which are operative in our society generally. It is of some interest in this connection that there was a day when a most unwelcome diffusion of governmental responsibility in large cities was achieved by the state legislatures by establishing substantially independent boards and commissions and assigning to them the control of various municipal activities. That, from the municipal point of view, was, of course, a serious infringement upon local autonomy, and it resulted in protective provisions being written into several state constitutions, including those of Colorado and Pennsylivania.[14] Such legislative interference with local affairs reeked with politics. The practical relation of that sort of thing to the modern *ad hoc* unit is the tendency in both toward fragmentation and diffusion of responsibility.

If there were substantial basis for hoping that an *ad hoc* unit which was truly metropolitan in scope could be effectively developed into a genuine general-function unit, we would have in it a means

of achieving full-fledged integration. This possibility has been in the minds of students of this subject for a good many years.[15] Unhappily, we have not had much to encourage the belief that the problem of achieving metropolitan integration can be worked out in this way. If one is being realistic in entertaining grave doubt that a special-function unit of metropolitan scope will evolve into full-fledged metropolitan governmental integration, there is not too much point in pursuing discussion of the *ad hoc* device here. I do, however, want to express a general point of view. The mechanism is a handy tool of expediency. It is common knowledge, for example, that special-function units have been used on occasion as means of circumventing constitutional debt limitations.[16] The use of the device involves, moreover, a functional fragmentation of the sort which has already been criticized and which is likely to be a further complicating factor because each new *ad hoc* unit established in addition to the existing units of local government increases potential jurisdictional problems. It is here suggested that an adequate attack upon metropolitan problems requires a type of governmental organization which is broad enough in its functional scope to take into account the interrelations of governmental problems and activities. On this basis the *ad hoc* device should be employed only where there is a compelling justification for special treatment.[17]

A method of achieving at least a substantial measure of metropolitan integration is annexation of outlying territory to the primary city. One should note at once that absorption of existing municipalities by merger or consolidation is quite another matter. Governing legislation generally does not permit involuntary absorption. Were it possible to work out and articulate in legislation a policy of annexation which would achieve flexible adjustment of city boundaries to cover the outer belt of urban development, annexation would become an extremely important tool, at least with respect to unincorporated territory. Up to this point, however, it has, with certain notable exceptions, been far from that. There are significant features of the annexation laws in many states which boldly underscore the need of a thorough re-examination of the subject. Thus one is likely to find that the annexation law of a particular state really has little policy content. In a recent study of Ohio annexation legislation it was found not only that policy content was meager but also that such as there was went far back to a day when urbanization as we know it did not exist.[18] One is likely to find, moreover, that the annexation laws of his state are, like those of Ohio, hostile to the extension of corporate limits.[19]

The adverse impact of such legislation upon metropolitan integration is reinforced by statutes governing the incorporation of new municipalities

on a totally inadequate basis. Thus, to use Ohio once more as an illustration, one finds Ohio legislation which permits the incorporation of suburban communities without any regard to the problems of the larger community and, for that matter, without meeting any basic standards with respect to the adequacy of the property-tax base, population, existing and potential urban development, the land-use configuration, and the relationship of the question of incorporation to the existing pattern of local governmental organization in the larger community.[20] When this is combined with the Texas concept of the indestructibility of home-rule municipalities,[21] we have the very disconcerting prospect of a primary city being ringed by small so-called "bedroom communities" which are parts of the larger urban community but which have effectively insulated themselves from the problems and the responsibilities of the primary city and, to a substantial extent, of the metropolitan area.

I am far from suggesting that the people living in the suburbs and outlying areas should have all of the decisions made for them. As matters stand, the difficulty is that the suburbanites are able in many states, by exercising a veto power with respect to proposed annexations, to make definitive decisions of great import for the larger community. This, it may be suggested, is an exceedingly

provincial and unwise approach to policy decisions affecting great metropolitan areas.

I want to say at this point that the notion that suburban opposition to annexation is to be accounted for in terms of a desire to escape city taxation is an engagingly simple but inaccurate explanation. It would take a very careful survey to determine the cost factors in any proposed annexation, but I venture to guess that in a given situation it might well turn out, even without considering the increased governmental services received, that annexation would not result in a higher financial burden to the suburbanite. What I believe is more compelling to him than the impact on his pocketbook is what he regards as the advantages of the suburban environment. Once there, he enjoys a nice, detached physical situation and would like to have a somewhat comparable local governmental pattern. In short, what he wants is all of the advantages of the metropolitan community, including the pleasant outlying area, but freedom from the headaches of community problems viewed in metropolitan-wide terms.

A very significant and disturbing aspect of this situation is that thousands of the ablest and best-trained people in a metropolitan community live outside the limits of the primary city and thus have no standing to participate in the political life of that city. A large number of business and pro-

fessional leaders spend their days in the metropolitan center and repair in the evening to the detachment of their suburban homes, where they can criticize the "crooked politicians" in the primary city in smug insulation from old-city problems. We suburbanites (for that I am) play important roles in the cultural, professional, and business life of the larger community, but, as a group, we so cherish a pleasant, physically and politically insulated home situation that our vision narrows alarmingly when one begins to talk of metropolitan integration.

Only a short time ago at a meeting in Philadelphia I suggested that the city, which now occupies an entire county, might well reach over into the suburbs by annexation. The idea plainly did not take root even though the remark was addressed to students of public administration. No doubt a partial explanation was the awareness that the primary city had not in the past been at all notable for good government and the belief that suburban independence was so strong, for the time being at least, that the idea was quite impractical. There is, in any event, a middle ground which should be more palatable to the people in the urban fringe. If they are not fully assimilated by the primary city in the governmental sense, but simply become for metropolitan community purposes a part of a governmental organization ade-

quate to that end, then, perhaps, an acceptable balance will have been struck.

There has been some talk of what might be described as automatic annexation. The core of this idea is that the boundaries of the primary city would with semiautomatic facility be extended to embrace a contiguous area once the area met a defined standard of urbanization or prospective urbanization. It has been said that the 1951 statute on annexation which was enacted to implement the Atlanta-Fulton County, Georgia, plan of governmental organization provided for automatic annexation.[22] While I suggest that this claim is somewhat exaggerated, the measure does constitute an important step in the direction of automatic annexation. The statute enables the city to activate annexation proceedings before a court once a contiguous area meets minimum standards with respect to occupied dwelling units and assessed valuation. The factors to be operative in such a system are subjects for the most careful study. What makes them and the system doubly significant is that they are a means of keeping a metropolitan community integrated as it continues its outward growth.

For many years people have talked of city-county consolidation as the most promising method of providing for metropolitan organization. Examples of its actual employment are, how-

ever, few indeed. The only instance for many years is the Baton Rouge–East Baton Rouge Parish consolidation consummated in 1947.[23] Philadelphia should be mentioned, for it is in process of bringing about more nearly complete city-county integration than has heretofore existed.[24]

Where, as in the Baton Rouge community, the county or parish is much greater in extent than the primary city, consolidation, were it complete, would not give recognition to urban and rural differences. This presents the problem of making internal accommodations which take into account actual service areas and appropriate tax burdens. The distinctly rural areas are not presently a part of the metropolitan community. I would be much interested to learn more about the Baton Rouge consolidation in actual operation. The community deserves great credit for its progressiveness in attacking the problems of metropolitanism and local governmental integration.

If a primary city and its urbanized environs substantially blanket a county, metropolitan integration, effective for the present stage of urban growth, can be effected by city-county consolidation. Once the metropolis overflowed the county limits, however, a different situation would exist; the metropolitan community would not be brought within an effective governmental organization embracing the entire community.

In Virginia there obtains a system of city-county separation. The cities of the commonwealth are islands in the counties and the city governments perform both city and county functions for their communities.[25] It is possible to effect metropolitan integration under this system in conjunction with Virginia's superior annexation procedure, which is judicially administered with considerable sympathy for the urban point of view.[26] I say this on the assumption that in the particular metropolitan community there were no suburban municipalities. It must be taken into account, moreover, that in counties surrounding large cities a rather unhappy county pattern is produced by making the cities truly metropolitan in scope; metropolitan integration leaves a county little more than a thick rind on the melon.[27]

I do not envision any adequate attack upon the larger problems of metropolitan government short of genuine metropolitan integration. I have already suggested that there appears to be small reason to hope that the requisite integration might be achieved by maturing a metropolitan-wide *ad hoc* unit into a general-function metropolitan government. That, however, is not our sole recourse. Students of the subject have been giving thoughtful consideration to two other methods of bringing about metropolitan integration, each of which has real possibilities.

The first method is to construct a metropolitan government based on an entire metropolitan community and built around the large primary city without destroying the integrity of lesser general-function community units within the metropolitan area. The other method differs in that the county government is the institution which would be shaped into a metropolitan government. County government, on the whole, has been relatively backward. Thus, employment of the second method might entail a minor revolution in county governmental organization and outlook. That gives one pause, especially where the primary city is already broadly experienced in large-scale urban administration.

It will be observed that from the standpoint of formal governmental organization a metropolitan area is likely to include three elements, namely, a large primary city, one or more peripheral or fringe municipalities, and patches of unincorporated territory. Perhaps the major problem in an effort to bring all these elements into a single metropolitan governmental framework is the achieving of a degree of integration necessary for the effective conduct of metropolitan community affairs while at the same time preserving lesser community units for purposes appropriate to them. A metropolitan organization which makes such an accommodation between the larger and the smaller

community interests and problems has been described as a "federation." This is a helpful, loose description but it lacks precision; the larger unit is not necessarily a federal union, since it may not in a given instance be established by the lesser units and its electorate and system of governmental representation are not of necessity geared to the lesser units.

The meeting of the major problem which I have mentioned is, of course, affected by practical considerations. The Toronto metropolitan community has recently achieved a type of integration built around the primary city.[28] The integrity of each of a number of smaller municipalities which ring the primary city has been preserved. In order to bring about any substantial measure of integration, for purposes of the metropolitan problem, it was a practical necessity that the autonomy of the pre-existing municipalities be respected in a number of functions which were narrowly local or, at least, not pressingly metropolitan in their characteristics. I do not suggest that these practical considerations are a serious impediment which lies across the path to worthy objectives. As a matter of fact, since the determination of what is a metropolitan function and what is not is no simple matter, there is some sense in resolving some of the doubts in the first instance against reposing authority in the integrated unit. Implicit in this is

the thought that once the metropolitan government proves itself in areas which are most clearly appropriate for its jurisdiction, it will be in a stronger position to seek to bring into the metropolitan framework functions not so readily classifiable.

I make no pretense that I am plowing ground which has not already been turned. I do not believe, however, that sufficient attention has been given to the place in the integration process of previously unincorporated areas and to the possibility of bringing about some decentralization in the primary city by recognizing intracity communities for appropriate purposes. With reference first to the previously unincorporated areas, it can be said that they might occupy any one of three types of governmental relationships: First, they could be brought into the larger metropolitan unit without having any lesser constituent status. Second, they could be annexed to existing municipal units within the metropolitan area, which would give them a share in that level of community affairs as well as in the metropolitan level. Third, they might be organized into one or more constituent units somewhat comparable to the existing municipalities. One cannot generalize helpfully about the relative advantages of these methods of dealing with the unincorporated areas. We are talking about a very complex subject, the manifestations

of which will be quite different in different metropolitan areas. The choice of the available methods should be guided by the general objective of achieving the needed metropolitan integration at the same time that the values associated with the integrity of lesser community units are given expression, and this with proper consideration for the wishes of the people of unincorporated areas affected.[29]

This brings us to the second matter, which may be described as the application of the concept of atomization to the primary city. Is it not both possible and feasible to move in this direction in some kinds of community interests and decisions with the hope of giving the citizenry generally a genuine opportunity to participate in the conduct of community affairs? I would say at once that I would be fearful of any rigid decentralization. Somehow in erecting a metropolitan government we must avoid either centralized or decentralized rigidity. As applied to the atomization of a city, this problem is not fundamentally different from its manifestation in the case of a small constituent municipality in a metropolitan area. What its solution demands, it seems to me, is that any proliferation of lesser community governmental units within the total metropolitan area should, in terms of organization, be as simple as possible. Moreover, there should be some policy developed in ad-

vance with respect to the method of resolving questions of metropolitan as against constituent community jurisdiction. The method might be resort to an independent agency of government such as the courts or a state administrative body. If the problem is not faced in advance it is likely to be dumped into the lap of the courts later on when jurisdictional conflicts are brought to the issue.

What are metropolitan government functions? Without by any means attempting a complete catalogue, I would suggest the following:

1. Community planning and co-ordination of private land-use control.
2. Major streets.
3. Public transit.
4. Major terminal facilities such as airports and docks.
5. Water and sewage services.
6. The major protective services—fire, police, and health. (Fire protection is not so clear a case as the others but it is put in the metropolitan category because the problem overruns local lines and calls for the capacity to mobilize the best in personnel, equipment, and methods where needed.)
7. Public housing and urban redevelopment.
8. Public library system.[30]

9. Major cultural and recreational facilities such as art galleries and large parks.
10. Civil defense.
11. Public welfare services.
12. Air pollution prevention and control.
13. Penal and correctional institutions.
14. Regulation of building construction and occupancy in the interest of safety and health.

This covers a great deal of ground. It would, however, leave many small-community functions to that level of government: secondary streets, private land-use control within the metropolitan planning framework, community cultural and recreational services, auditoriums, and school administration for constituent communities with adequate population and economic bases.

Metropolitanism is with us. What shall we do about it? The problems are so complex and social change so rapid that a "what's the use?" attitude is not beyond understanding. I am far, however, from being a fatalist. The resources of the human mind and spirit are very great.

I believe that, in the relative sense in which we must speak of all human effort, we shall achieve balanced and wholesome metropolitan community life by effecting a degree of metropolitan integra-

tion appropriate to the larger community while at the same time preserving the values associated with the smaller constituent communities.

II

The Regional Community

IN ONE IMPORTANT RESPECT this topic is an extension of the first. There are a number of metropolitan communities in the land which, in the sense that they overlap two or more states, are regional in character. This, of course, complicates the business of effecting metropolitan integration.

Conceivably, by interstate compact the states concerned could set up a genuine metropolitan government which was general function in character. It would present legal questions with respect to abdication of police, taxing, and other governmental authority of one participating state to local government personnel of other states, but I do not believe that those questions would be unanswerable. We are not, in the first place, confined for all time by existing constitutional limitations; we are free to propose changes in the state organic law if that be the dictate of wisdom. Short of constitutional change to pave the way, it could be urged with some reason that the metropolitan government was, for its purposes, a local arm of each participating state. It is true that require-

ments of citizenship and residence for office holding might give us pause. And there would be complications in working out representation on a metropolitan unit governing body. The sound course in a given metropolitan community would be to develop a good plan of integration and then seek the necessary changes in the law, constitutional and statutory, to permit its effectuation.

Thus far, thorough integration of an interstate metropolitan community has not been attempted. However, there have been instances of *ad hoc* steps in the general direction of integration.

The most conspicuous example we have of interstate co-operation in a metropolitan area is the Port of New York Authority. This bi-state agency is not, in the first place, a local organ. It is an arm of the two states of New Jersey and New York. The functions of the authority are very important but limited. It is concerned with the planning and development of transportation and terminal facilities of the port district and with the improvement of commerce in the district. Its chief interest has been its public-works function.[1]

The Bi-State Development Agency, whose domain is the three-thousand-square-mile Missouri-Illinois Metropolitan District of which St. Louis is the urban center, goes a significant step further than the Port of New York Authority. It, too, is an arm of the two states and not a truly local body. In

addition, however, to transportation and terminal objectives, it is charged with a broad metropolitan planning function; the agency board has the responsibility for making plans for "submission to the communities involved for the co-ordination of streets, highways, parking areas, terminals, water supply and sewage and drainage facilities, recreational facilities, land-use patterns, and other matters in which joint or co-ordinated action will be generally beneficial."[2] This planning function is of great significance. Through the instrumentality of the bi-state agency the planning base is made adequate for the occasion and, beyond this, there is reason to hope that the approach to the agency's transportation responsibilities would be illumined in broad perspective by the related planning activity. The agency is not empowered to implement planning through exercise of regulatory power. That is an as yet largely undeveloped aspect of interstate action through compacts. I shall make further reference to the topic at a later juncture.

When we come to the governmental problems of the nonmetropolitan regional community we are confronted with many variables and, in most cases, with weaker cohesive community forces. A multi-state region may have the elements of community for one purpose and not another. A region consisting of a river basin is likely to be bound

together by common economic interests or at least capable of such integration by reason of potential interests of that nature. In other areas of joint state action the co-operative pull may be relatively limited. A regional compact for forest fire prevention and control would doubtless fit in this category.

Forces conducive to thorough integration are not so significant here as in the case of a metropolitan community. While it has been wisely observed that "the great need of American Federalism at present is the development of mechanisms for interstitial integration of areas,"[3] this does not mean that we need regional general-function units of government. What is indicated is employment of *ad hoc* governmental arrangements tailored to the function and to the problem area. Differences in regions and in the problems confronted will make for important variations in powers and organization of interstate agencies. In some instances very substantial administrative machinery will be needed. The interstate agency may call for regulatory power comparable to that delegated to conventional state administrative agencies. There has been no suggestion, however, that to make the requisite in-between governmental arrangements we should go so far as to establish more or less full-fledged regional governments with legislative, if not judicial, power in addition to administrative authority.

There is one possible approach to advancement of our regional interests which is so remote from the realm of practical accomplishment that it will be mentioned only as a base-tagging exercise. States are so jealous of their territorial integrity that even minor boundary adjustments are very difficult of realization. Conceivably, we could make a major realignment of states which would put aside the present highly artificial configuration and establish a new pattern along regional lines. Historical and political considerations stoutly block the way, but, theoretically at least, a state pattern more realistically related to economic as well as geographical and population factors could be achieved. While Federal Reserve districts are rather large they are suggestive of a regional arrangement sensitive to economic factors.

It should be granted that even were a reshuffling of the states worked out with an eye to conformity of state areas as near as possible to regional communities, the problems of interstate co-operation would not have been eliminated. The explanation has already appeared: a given territory may have the elements of a regional community for one purpose and not for another.

A second approach to regional problems calls for federal control and administration. In general, this has certain obvious practical advantages. The basic policy determinations can be made by one governmental authority without need of bringing

a number of units of government into agreement. The federal government can move with greater freedom in fitting governmental arrangements to the actual problem or service area, since it is acting within its own broader jurisdiction. Obviously the central government has greater financial resources upon which to draw for support of a regional activity or development.

There are, however, other considerations to be weighed. The maintenance of a sound balance in our federal system with effective public administration at all levels bespeaks primary responsibility on the same base as the governmental activity. This means regional responsibility in the case of a regional community.

It must be remembered that federal administration does not of necessity mean control by a remote, insulated central government in Washington. The instruments of federal administration are far more flexible than that. Substantial decentralization can be achieved by regional units tailored to the function with which we are concerned. A regional unit may be given separate corporate capacity with very considerable independence within the general structural and policy framework established by Congress. I take it that Congress has the power to require that a qualification for membership on the governing board of a regional agency be residence in the region. The

wisdom of such a requirement would be another matter.

Federal decentralization, however, is not regional self-determination. The people of a region may prefer to assume the prime responsibility. I suggest that what might be termed regional autonomy should be respected, but that federal action may be warranted in particular situations, especially where the element of national interest is strong and efforts to act through multi-state cooperation have failed. We are speaking here of regions in the sense of areas which overlap two or more states and which present problems for politically organized society that are characteristic of the regions. I can think of situations which fall short of deserving that description and, thus, for which Federal action may be undesirable in any event. I recall one which affected the state of Louisiana.

Back in the late 1930's Texans in the Port Arthur district wanted a bridge constructed across the navigable interstate waters of Lake Sabine to provide them access to nice clean beaches in Louisiana unaffected by these messy salt water oil operations we have all heard so much about of late. As I am informed, the Louisiana folk were not receptive. The enterprising Texans were undaunted; they put through Congress an act creating the Port Arthur Bridge Commission, the mem-

bers of which were, conveniently enough, to be appointed by the mayor of Port Arthur.[4] The commission was empowered to finance as a self-liquidating venture and to construct the desired bridge.

Things went awry when PWA financial aid was sought. PWA counsel made the unanswered point that the power to appoint federal personnel could not be turned over to an officer of another sovereign, in view of the language of Section 2 of Article II of the Constitution governing the appointment of federal officials. Thus the act was ineffective. By the time a corrective amendment was enacted,[5] it was too late to obtain funds under the then current PWA program.

This is not the occasion to discuss thoroughly all the major types of interstate co-operation. We are concerned with them here simply as they bear on the problems of regionalism. Reciprocal legislation, administrative agreements, and uniform state laws are valued instruments of interstate co-operation, but, for the most part, they have no special regional significance. States participate without relation to geographical juxtaposition.[6]

In some types of developments the purpose could be served by letting one state perform the function and giving it appropriate jurisdiction in the other states affected. Thus the Port of New York Authority tunnel and bridge facilities connecting New Jersey and Manhattan could have

been provided by New York with federal consent for the use of navigable waters and New Jersey consent for the New Jersey ends and approaches.[7] This is stated without reference to the question whether Congressional consent would be a legal prerequisite. The immediate emphasis is upon the fact of performance of the governmental function by a single state.

There is one functional aspect of interstate co-operation which is not confined to any regional geographical base, but which is of such challenging interest as a lively example of the need for intergovernmental co-operation that I propose to discuss it briefly, at the risk of being charged with going somewhat afield. I have reference to problems of jurisdiction in connection with crimes committed on aircraft while flying over American domestic territory. There seems scant doubt that Congress could deal with the subject of conduct which (1) constituted interference with interstate commerce or (2) involved the use of aircraft in interstate flight for anti-social purposes.[8] Even in the case of a crime against a passenger which did not affect the flight as such, there is basis for argument that the conduct would be as much a hazard and impediment to aviation across state lines as it would be to federal jurisdiction on the ground. Do we, however, wish to have a body of federal criminal law specially shaped to cover all the per-

sonal property crimes which might be associated with interstate aviation? I doubt that we do, even though federal jurisdiction would make things simpler from the standpoint of having a jurisdiction broad enough to facilitate apprehension of persons charged with crime and to enable us to ignore state-line refinements. On the other hand, old state-law concepts such as jurisdiction *ad caelum* are not equal to the occasion; the mobility and speed of aircraft make rigid territorial notions of jurisdiction strictly horse and buggy in character and utility. A criminal act committed on an airplane may be begun over one state and completed over another. Proof of the position of the aircraft at the time may be impossible, in any event.

The appropriate question for our purposes is whether or not problems of this character can be dealt with effectively at the state level by interstate compact.[9] I do not propose to go much further than to pose the question because of the complex considerations bearing upon an answer and because it carries us beyond regionalism. I do think that the interstate co-operation approach merits thorough consideration because it at least gives some promise of providing a more flexible basis for settling jurisdictional questions than any rigid territorial concept of jurisdiction.

Not without significance to interstate co-opera-

tion in a regional orientation is the multiplicity of agencies and organizations which are concerned with common problems. At the present time all of the states have established, as permanent agencies, committees or commissions for interstate co-operation.[10] Out of this development came the Council of State Governments and the creation of special commissions for the study of various problems of general concern. The Council of State Governments, by its own description, acts as

> 1. A medium for improving legislative, administrative, judicial practices within the States.
>
> 2. An agency for encouraging full co-operation among the States in solving interstate problems, both regional and national.
>
> 3. A means of facilitating and improving Federal-State relations.

Again, in its own way of putting it, the council works toward its objectives by

> Conducting major research projects and publishing the results.
>
> Maintaining an inquiry-and-information service available to all the States.
>
> Serving as a clearing house through which the States exchange their own information.

> Holding national and regional meetings —these range from a biennial General Assembly of the States to frequent working panels or conferences on particular questions— in which State officials and legislatures survey common problems and take common counsel.
>
> Acting as secretariat for various interstate organizations.[11]

There are the well-known national Governors Conference and regional governors conferences, notably the Conference of Southern Governors. The state courts have their conferences of chief justices concerned with the improvement of judicial administration. The list of associations of state officials is long; I will not burden you with the details. I shall merely add that common to them and the other organizations I have mentioned is interstate co-operation, which may have a particular regional impact. The council's regular publications, the biennial volume entitled *The Book of the States,* and the monthly magazine, *State Government,* are very useful indeed. As a matter of fact, my own resort to them includes the work done in preparation for this lecture.

The chief tool by which two or more states may achieve functional consolidation for regional purposes is, of course, the interstate compact. It will be recalled that this device is recognized in

the federal Constitution by provisions which forbid states to make treaties, but which only exact that there be Congressional consent for the making of interstate compacts.[12]

The first thing to be noticed here is that this is not an arrangement which necessarily extends the scope of the region which is the base of cooperative action over the total area of the participating states. On the contrary, one of the advantages of this instrument is that governmental arrangements can be adapted to fit the problem area. Thus the Ohio Valley Water Sanitation Compact, the object of which is to protect the waters in the Ohio River basin from pollution, applies to a district that embraces all the territory in the signatory states from which the water flows ultimately into the Ohio River or its tributaries.[13] This is enough to make it plain that geographically the interstate compact is a very flexible mechanism.

Much of the older literature on this subject, however, put the interstate compact down generally as a device of very limited potentialities because of its asserted rigidity.[14] It was thought of as a very useful means of settling boundary disputes, for example, since the very act of agreement or relatively limited acts of performance would make the arrangement definitive and entail no problem of continuous planning and administration. Only in very recent years have we begun to rid ourselves

of the shackles of this unimaginative thinking. As I shall shortly bring out more fully by reference to compacts entered into during the last few years, we are now demonstrating that the compact device has great flexibility not only in the territorial sense, but also with respect to the shaping of governmental arrangements and the allocation of governmental powers in keeping with the requirements of regional problems.

At this point, I think that we should take note of a significant decision of the Supreme Court of the United States, which has, in the language of one very penetrating scholar "laid the necessary solid foundation for flexible federalism."[15] The case of *State* ex rel. *Dyer v. Sims,*[16] which was decided by the Supreme Court of the United States in 1951, came to the highest court upon certiorari to the Supreme Court of Appeals of West Virginia. The case involved the validity, under the Constitution of West Virginia, of the participation of that state in the Ohio River Valley Water Sanitation Compact. The highest court of the state had decided that West Virginia ratification of the compact was invalid for two reasons. First, the compact, by obligating the participating states to make appropriations to meet the operating expenses of the commission established by the compact, violated the state constitutional prohibition on state debt. Second, a "compact" provision authorizing

the interstate commission to require minimum treatment of sewage and industrial wastes discharged into the Ohio River basin waters and to order abatement of forbidden discharge by governmental units and private persons of the signatory states constituted, on general principles, an abdication of state police power, even though every such order was subject to the veto of a signatory state by a majority of the members of the commission from that state. The Supreme Court of the United States was unanimous in reversing the decision of the state court. All of the justices agreed that the compact was binding on West Virginia. Three different rationalizations, however, were put forward. We shall concern ourselves here only with that expressed by Mr. Justice Frankfurter in writing the opinion of the court, which, significantly, was concurred in by six of the members and thus is authoritative. Mr. Justice Frankfurter is, of course, an old-time student of interstate compacts; he was the coauthor of a major study on the subject published in 1925.[17]

The approach of Mr. Justice Frankfurter was, in brief, that while for exclusively state purposes the highest court of a state is the last word on the meaning of the state's written law, the federal Supreme Court is free to reach its own independent conclusions, even on the meaning of provisions of a state constitution, where, in this limited field,

an interstate compact brings in issue "the rights of other states and the United States." What he said, in substance, was that the court was just as free here as under the Contract Clause to determine the meaning of a state constitution and state statutes for purposes of making a decision regarding the existence, meaning, and enforcement of interstate compacts. The Contract Clause is, of course, the clause of the Constitution which forbids any state to pass a law impairing the obligation of contracts. Obviously, in applying the Contract Clause the high court has to be free to determine the existence and meaning of contracts and whether state action does impair them. As the Supreme Court early said:

> Of what use would the appellate power be to a litigant who feels himself aggrieved by some particular state legislation, if this court could not decide independently of all adjudication by the Supreme Court of a State whether or not the phraseology of an instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States, and that its obligation should be enforced notwithstanding a contrary conclusion by a Supreme Court of a State?[18]

Mr. Justice Frankfurter proceeded, in the *Sims case,* to examine the state constitutional questions

on their merits and determined in each instance that the state constitution had not been violated.

It is, of course, elementary that within the state sphere the highest court of a state is the ultimate interpreter of a state's organic law. If, however, this proposition were applied where the questions raised had to do with the validity of participation by a state in an interstate compact to which the consent of Congress had been given, the potentialities of interstate compacts as a prime tool of interstate co-operation in meeting regional problems would be severely limited. This is not to suggest that the state courts are expected to be narrow and mean in their outlook; the point is that a state court could hardly be expected to achieve the requisite detachment from its state orientation, and the effectiveness of any compact would be in jeopardy of the highest court of a participating state determining that in some respects the government of that state had flouted its constitution.

I am constrained to repeat a comment I made on this case shortly after the United States Supreme Court reached a decision: "The reverse English involved is intriguing; the highest national court, in a case brought up on certiorari and not directly involving more than one state, holds a state to its voluntary compact and thereby fortifies state autonomy and interstate co-operation against any threat of national regulation."[19]

A major aspect of the use of interstate compacts which has not been sufficiently studied is the matter of making provision in a compact for the requisite governmental arrangements or administrative organization. In my judgment, we are just beginning to visualize the possibilities of the interstate compact as a means of providing appropriate administrative machinery at the regional level. It is true that we have been accustomed to a limited use of so-called authorities in this area of public administration, and we readily conceive of a multistate public corporation as a mechanism to deal with regional problems. If, however, compacts are to serve a variety of regional purposes adequately, we must go far beyond setting up in corporate form a good public business organization. This, I think, we are beginning to do; I observe some encouraging developments in that direction.

In order to deal with the subject systematically let us talk about the structural or administrative aspects of the interstate compact in terms of certain major types of regional functions or problems to which the compact method may be applied.

We are generally quite familiar now with the use of interstate compacts to provide for the establishment and operation of public facilities of regional significance. The best known venture of this sort is, of course, the New Jersey–New York

co-operative enterprise through the instrumentality of the Port of New York Authority. There the emphasis has been upon bridges, tunnels, terminals, and other facilities having to do with the movement of persons and things in an interstate metropolitan area. The authority has an excellent reputation for business organization and management. It has a very good record of self-liquidating financing of its facilities. It has not been acclaimed as an organ of regional planning.

The relationship of major public works to planning requires no demonstration. Were we forced to the conclusion that we could not proceed with an interstate public works agency which set its work in the framework of broad and imaginative regional planning otherwise effectively implemented, we would be in a poor position to use the interstate compact. I do not see, however, any insuperable difficulties in the path of gearing interstate co-operation for public works to effective regional planning. It is obvious that a regional agency established by interstate compact could be given the continuity and the requisite staff and other components for the performance of the planning function. It is equally apparent that a high level of co-operation with the various operating units existing in the region would be needed. We would not, however, be compelled to rely solely upon voluntary co-operation. The police power of

the state can be used for the implementation of internal planning; what is there to preclude the employment of the police power of several co-operating states to give vitality to co-operative regional planning?

It is appropriate to make further reference at this juncture to the legal objection that a state cannot abdicate its police power to another sovereign. The answer, I suggest, is that each participating state in a regional arrangement has voluntarily embraced the regional agency as its own governmental arm for purposes of the particular co-operative effort. While I think that this is a sound position, the line could be drawn with complete assurance on a somewhat narrower basis; it could be drawn as it is in the Ohio River Water Sanitation Compact, to give a state's representatives in the governing body of the interstate agency a veto with respect to exercise of regulatory power within its geographical limits.

In order to illustrate the potential of police-power implementation of regional planning under an interstate compact, one might invoke the analogy of the approval by local authorities of the platting of projected residential and other subdivisions.[20] Conceivably, an interstate agency set up by interstate compact could be given a somewhat similar authority with respect to approval of plans for local public improvements which had a sub-

stantial relationship with a master regional plan. I believe that it would be going too far to give the agency what amounted to an absolute veto, but an intermediate ground undoubtedly could be reached, which would mean, in substance, that the agency decision could not be overridden lightly.

The most challenging opportunities for interstate co-operation on the grand scale lie within that province of governmental action which has to do with the conservation and development of the land and water resources of a large river basin. In the case of the great Missouri River basin, for example, we have a tremendous region with an extraordinary potential now seriously endangered by the lack of the requisite organization, planning, and administration at the regional level. Conceived in proper perspective, a regional approach to this larger community responsibility would involve far-reaching implications, particularly for the people of the region and, to a lesser but important extent, for the rest of the country. As the river-basin approach in the Tennessee Valley has demonstrated, the improvement of navigation, the conservation of the soil, the production of power, the provision of recreational facilities, the protection of forests, and the achievement of flood control combine both to change the physical face of the land and to influence pervasively the life of the whole region.

It has been demonstrated by the Tennessee Valley Authority that this type of regional community development can be effectively conceived and executed by an arm of the federal government. While there are those who entertain different views and whose independence of judgment has my unreserved respect, I am prepared to say without hesitation that the Tennessee Valley Authority program has been magnificent in conception, efficient in administration, and remarkably salutary in result. I think of it as a great national achievement which does credit to us all.

To recognize what has been accomplished through TVA is not to say that the pattern has been set by TVA for all future regional river-basin development in this country. If the responsibility can be discharged effectively, even though not quite so well, by the states on a co-operative basis, that method should not be lightly put aside. The debate with respect to this question as applied to the Missouri River basin is not yet over. The majority of the Missouri Basin Survey Commission, which was appointed by President Truman in January, 1952, and which filed its report in January, 1953, took the position that the proposed Missouri Basin Commission should be a federal instrumentality.[21] Three of the eleven commissioners filed a dissenting statement in which they put forward a proposal that the regional agency

should be created by interstate compact to which the United States as well as each of the Missouri basin states would be a party. There are now pending in Congress several bills, the object of which is to grant Congressional consent to the negotiation by the ten Missouri basin states of a conservation and development compact subject to the ratification of Congress.[22] These measures bespeak integration of the resource-development programs and operations of agencies of the nation and of the states and the securing of effective co-ordination and co-operation between the individual states concerned and between the nation and the states.

While, as must be apparent, I am far from being hostile to the federal approach to the problem, I would like to see interstate co-operation tried on such a scale. Obviously, it would be necessary to make a very deliberate effort to bring about co-ordination between the interstate agency and the federal government, and Congress is entirely free to insist on proper provision for such co-ordination as a condition to its consent to the compact. As Mr. Justice Roberts put it in the *Dravo Contracting Co. case,* consent may be granted conditionally "upon terms appropriate to the subject and transgressing no constitutional limitations."[23] It is evident enough that there are existing federal policies and programs which must be taken into account. The soil-conservation program under the

aegis of the Department of Agriculture and the federal power policy administered by the Federal Power Commission both bear on the business of river-basin development. I am not persuaded that the problem of arranging the requisite co-ordination is beyond our capacity for effective resolution.

We have been witnessing substantial attacks on other trans-state problems by interstate co-operation. The New England states have established the Northeastern Forest Fire Commission by compact for the purpose of promoting the prevention and control of forest fires in that region of the United States and adjacent areas in Canada.[24] This compact stresses planning for protection against forest fires and mutual aid in fighting them. Without a doubt, it could be modified to include more positive regulatory features involving the exertion of the police power of government in the interest of forest protection.

There now exist three marine fishery commissions created by interstate compact with respect to Atlantic,[25] Gulf,[26] and Pacific[27] waters. None of these agencies, as originally constituted, had regulatory powers. They were established to promote the conservation and better utilization of the fisheries in the marine areas to which the participating states are adjacent. They encourage interstate research and make recommendations with respect to legislation and co-operative action by the signatory states.

In 1950, however, Congress gave its consent to an amendment to the Atlantic States Marine Fisheries Compact which was designed to pave the way for the exercise of limited regulatory power by the commission:

> The States consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating States with respect to specific fisheries in which such States have a common interest. The representatives of such States on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted provided that the States so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the States participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact.[28]

It will be seen that this does not go beyond opening the way for subsequent joint state action conferring regulatory power.

I have no doubt that the well-informed citizen is generally familiar with the regional approach to higher education, particularly in the South. A region for this purpose is likely to be a very different areal pattern from that for other interstate compact arrangements. I am sure that a major factor in determining the scope of the region when the southern states turned to interstate co-operation in higher education was racial segregation. Obviously, such a factor would tend to define the region along its own problem lines. Several of the mountain states have followed the lead of the South by making their own regional compact for purposes of higher education. In that relatively sparsely settled area the economic factor is dominant. It may be assumed that economic considerations are also very significant in the South. I am equally confident that regional co-operation has great possibilities for the lifting of professional and graduate training, in particular, to higher levels of excellence.

I do not want to pursue at length a highly sensitive subject. I do, however, choose to speak briefly in a frank, but friendly, vein about the segregation factor. I am sure that whatever the Supreme Court of the United States decides in the pending segregation cases,[29] the policy of segregation as applied to higher education is insupportable in principle and that the practical problem of elimi-

nating racial segregation at this level is a rapidly passing phase of social adjustment. A university should be an aristocracy of intellectual merit in the access to which race has no relevance. This, in other words, is genuine democracy in education. We have been making good progress in that direction. The faster we achieve thorough nonsegregation in the community of higher education the better for the internal welfare of our country and for our moral leadership in the free world.

I am happy to say that, in my view, interstate co-operation in providing the highest possible quality of educational opportunities at the college and the graduate and professional levels has strong appeal on its merits independent of such extrinsic factors as segregation. The state of Florida, for example, does not have a medical school. It might be wiser for that state to contribute to the strength of a great regional medical school than to establish an independent institution of its own. The general situation over the country with respect to educational facilities for training in veterinary medicine has been even more in point. There are relatively few veterinary schools in the entire nation. The prospect of development of outstanding veterinary school facilities for an appropriate region consisting of several states appears most attractive to this layman.

The encouragement of professional study un-

der a flexible system of regional co-operation involving home-state subsidy of study in a neighboring state where the requisite facilities exist has, of course, been in progress for several years. This is a very rational procedure. It does, however, create problems when applied to graduate study. Graduate work is usually undertaken by what is basically the group of more mature scholars on the faculty who have not yet attained a graduate degree. To route prospective graduate students in chemistry, for example, to another institution strong in that field is to aggravate the problem of strengthening the local department.

As far as I can see, interstate co-operation in the realm of higher education would not involve the erection of any elaborate administrative machinery unless the program went to the point of establishing major institutional units. Conceivably, the states in a region might set up a new university; I certainly would not think it wise to establish an independent institution which was less than a university in scope and stature. I consider it a vital principle of higher educational organization that strong professional and graduate programs can only be developed, with rare exceptions, within the university framework.

Regional co-operation in research holds great promise. I hope that exploitation of the research potential through the pooling of facilities and

scholars will not be concentrated in the physical and biological sciences to the neglect of the behavioral sciences. The latter area is crying for inquiry, and we have hardly begun to develop the techniques for achieving the requisite interdisciplinary co-operation in the field. It would be most salutary to give co-operative research a strong boost on a regional basis.

An ever-present practical consideration is finance. There are three principal sources of funds for interstate agencies. State appropriations have been the sole support in many instances. Federal subsidy by grants-in-aid is a second source. Revenues from agency activities productive of income constitute the third major financial recourse. I am aware of no instance in which it has been attempted to endow a regional instrumentality with taxing power, nor do I anticipate that, apart from metropolitan situations, action of this character is in prospect, even though it would bear upon the relative independence of the particular agency.

Interstate co-operation which involves provision and operation of public facilities is likely to be revenue-producing. This has significance for initial capital financing as well as for support of current operations. The financing of public improvements by the issuance of revenue bonds, that is, obligations payable from the revenues arising from the operation of the completed project, has

come of age. Revenue-bond financing is appropriate for use by an interstate agency such as the Port of New York Authority, whose activities meet the tests of the financial markets for prospective revenues. By giving the agency corporate capacity the way is paved for unitary action in the issuance of securities.

There is a very interesting aspect of Congressional consent to interstate compacts which is important with respect to the issuance of securities by an interstate agency. Once Congress has given unqualified consent to a compact, may it come along later and modify or revoke its consent? If, for example, one of the revenue-producing facilities of an interstate agency were to be a bridge across the navigable waters of the United States, might Congress decide, after revenue bonds had been issued by the agency, that the bridge was not entirely compatible with the interests of the United States in navigation on the waters affected, revoke its consent to the compact, at least to that extent, and require removal of the bridge? This is a type of question with respect to interstate compacts which has received little discussion.

One hesitates to embrace the idea that unqualified Congressional consent, once given, is an unalterable *fait accompli* like a conveyance of title to land. It is true that the states signatory to a compact are bound by its terms, except to the extent

that a power of revocation has been reserved or to the extent that modification is achieved by mutual consent.[30] It is established, moreover, that an interstate compact is a contract within the meaning of the Contract Clause of the Constitution, which forbids any state to enact any law impairing the obligation of contract.[31] Congress, however, is in a different position. The federal government is ordinarily not a party to the compact at all and is not subject to the Contract Clause in any event.[32] What is more to the point—how can it properly be said that by consenting to a compact Congress gives up or restricts any of its own constitutional powers such as its control of navigable waters? The action of Congress in consenting to an interstate compact is, I would say, strictly political in character and subject to its own modification, at least to the extent that would be involved in the exercise of one of its constitutional powers in a way inconsistent with the terms of the compact.

If this be the case, how is it that revenue-bond financing by interstate agencies which are the creatures of compact can have the requisite assurance of the continuance of the revenue-producing facilities upon which the very source of payment of the obligations depends? The answer, I believe, is that while Congress is not bound, it is unthinkable that the legislative branch of the federal government would exercise its political power to modify con-

sent to an interstate compact in such a way as to prevent fulfillment of the obligations of an interstate agency except under the most extraordinary circumstances involving a compelling national interest.

It is of special interest in this connection that in giving its consent to the compact between Missouri and Illinois creating the Bi-State Development Agency and the Bi-State Metropolitan District focused on St. Louis, Congress not only expressly reserved freedom to alter, amend, or repeal the consenting joint resolution, but also expressly stipulated that any obligations issued and outstanding, including the income derived therefrom, under the terms of the compact or agreement, should be subject to the tax laws of the United States.[33] It will be seen here that two significant reservations were made. Congress, in the first place, made it plain that the power to modify its consent was reserved. Secondly, there was an express denial to the Bi-State Agency of the cherished immunity of the income of state and municipal bonds from federal income taxation. That is an adverse market factor which would affect the interest rate on obligations issued by the Bi-State Agency, but, of course, does not affect its basic power to borrow money.

With respect to the factor of flexibility in interstate arrangements, it should be noted that the

Compact Clause of the federal Constitution does not apply to all interstate arrangements. The Supreme Court of the United States, in a case decided in 1893, embraced the view, by dictum, that the consent of Congress is required only with respect to interstate agreements which affect the political balance within the federal system.[34] While the language of the Compact Clause does not expressly articulate this distinction, it does appear to be a sound expression of the policy of the clause in implementing the establishment of a more tightly integrated federal system in the place of the loose federation which existed under the Articles of Confederation.

As is not uncommonly the case, judicial interpretation itself here calls for further interpretation. The determination of the question whether a particular agreement will affect the balance in the federal scheme of things can be a matter of great difficulty. It was debated in the case of the Southern Regional Education Compact, which does not have the consent of Congress. It will be recalled that after favorable action in the House of Representatives with respect to Congressional consent to that compact by joint resolution, the Senate debated the subject and then sent the joint resolution back to committee for examination of the question whether Congressional consent was required. Nothing further happened; the resolution

simply remained in committee without additional action.[35] Meanwhile, the signatory states have gone ahead on the basis that Congressional consent is not required, since public education is a state responsibility and what the participating states are doing under the compact is merely sharing educational resources in a way that does not enlarge state political powers at the expense of the United States.

One of the potentialities achieved by interstate compact is vertical as well as horizontal co-operation. That is to say, the federal government can participate in the co-operative venture in a way designed to leave the signatory states as the prime participants but at the same time to give the federal government representation with respect to national interests which may be affected. As I have already indicated, this combination of vertical and horizontal co-operation or integration for regional purposes is pretty clearly required for a land and water conservation and development program in a major river basin, in view of strong national interests in such elements as navigation, electric power, and soil conservation. This potential of the interstate compact is clearly on the side of flexibility in achieving interstitial adjustment in the federal system.

Another interesting potential of interstate co-operation through the compact device is the recog-

nition of regional interests and problems which cut across international boundaries. If a regional interest such as the prevention and control of forest fires, for example, covers an area lying partly in this country and partly in Canada, the compact method is available for the working out of a regional attack on the problem.[36] Thus we find that the mechanism has a quality of flexibility which extends its application horizontally even beyond our national boundaries.

In terms of the actual communities of interest in this country, the states are a very artificial configuration. Even if a much more rational division of the territory of the nation into states along regional lines that are responsive to economic and geographical factors were politically possible, there would still be problems of interstate adjustment, because what is a region for one purpose may well not be for another.

In meeting problems which lie in this intermediate zone between the state and national governments we are not confined to national action. While it is recognized that federal decentralization for regional purposes can be achieved, federal administration in any case is national policy-making and execution for a much less than national community.

Without excluding the possibility that there

may be exceptional situations, the general thesis embraced here is that the prime attack upon our domestic regional problems should be through interstate co-operation or integration of the scope and quality indicated by the occasion. I mean by this an *ad hoc* approach; there is no suggestion that we need regional general-function governmental units. This approach does not exclude federal participation to the extent required in the general national interest.

Very considerable resourcefulness and ingenuity have been displayed in the realm of interstate co-operation. We are, however, far from exhausting our resources in this respect. The untapped potential of the interstate compact, particularly with respect to problems which demand broad continuing planning or the exercise of regulatory power, or both, is great. Nor have we matured our thinking about the organization and procedures of interstate agencies. In these areas there is still a frontier in American government.

III

The International Community

IT IS RATHER GRIMLY IRONICAL that at this late hour the forces of nationalism should be so strong. I do not mean that there is not now and will not continue to be an important place for the national state in the total scheme of things. What I do mean to say is that the extreme nationalism now being manifested by a considerable body of opinion in America and powerful forces elsewhere in the world is chauvinistic and an impediment to the resolution of grave problems which transcend the national sphere.

It is altogether fitting that we restate here a thought which permeates this study: To be adequate, the approach to human problems must be undertaken on a base as broad as the community affected. It is equally appropriate to reaffirm in this larger context the proposition that there is an extremely significant interdependence of governmental units which strongly indicates a need for co-operative action.

Here again, I do not want to labor the factor of interdependence, but something more than its

mention is called for. The condition of nonself-sufficiency is, of course, not so much a part of daily experience as is the individual interdependence in our society. The latter literally involves entrusting one's very life to scores of other people from day to day—in automobile traffic or the use of public means of transit, for example. Interdependence of individuals in economic function is just as evident. Governmental interdependence, though not so conspicuously omnipresent, is just as real. There is not the slightest question, for example, that the very national existence of many countries depends upon the strength and firmness of America. I do not mean that we stand alone, but simply that we are the key power in the free world.

While the military interdependence is perhaps most striking, the economic situation is hardly less conspicuous in this respect. In terms of economic self-sufficiency there is nothing more artificial and inadequate than the distribution of territory and resources among national units. Nor do I know of anything which could more eloquently bespeak the necessity of co-operation in the international community.

The extent of cultural, educational, moral, and political interdependence among nations is also very great. The situation in which we find ourselves today is extremely difficult, so much so that one can understand without in any degree approv-

ing the psychology of fear and withdrawal which seems to have gripped the minds of many of our people.

There was a dawning of understanding of the elements of one-worldness in the Victorian era. This realization probably came about first in relation to the processes of communication. In postal matters, for example, the appropriate reach of communication was nothing less than the entire world. This is more strikingly true of such spectacular means of communication as radio. Significant instances of international co-operation such as the Universal Postal Union, which was established in 1878, stand as credits on the record of the Victorians.[1]

In our century the tremendous changes which have been taking place have served to emphasize with the greatest urgency that we are one small world in which men and nations depend one upon another and in which the greatest challenges of the social order are broadly international in their scope.

In the Western world appropriate sensitivity to these developments has been impaired by an understandable preoccupation with more immediate domestic concerns; by the efforts of certain nations which have depended upon military force and war as the chief instruments of national policy to achieve an artificial self-sufficiency deemed by

them requisite to the successful prosecution of a war; by the psychology of escape; and by our lack of success in such earlier efforts as the League of Nations.

Another extremely complicating factor, which can be described as a case of the chickens coming home to roost, is the intensely nationalistic spirit which exists in Africa, the Middle East, and the East as a revulsion against long periods of colonialism or at least external domination. This movement, too, is understandable, but it is extremely unfortunate at this stage of human affairs. Perhaps it is too much to expect the peoples involved to move from a colonial or dominated status to a broad internationalistic approach without experiencing the satisfactions, responsibilities, and disappointments of national independence. But more of this later; I wish to return now to the problems we have at home in living up to our responsibilities in relation to the difficulties of the international community.

I was greatly relieved but by no means entirely reassured when a largely watered-down version of the so-called Bricker Resolution failed by one vote of passage in the United States Senate on February 26, 1954.[2] To me, this attempt to write into the Constitution further limitations upon the power of the President to make treaties and executive agreements with other governments was a mani-

festation of the psychology of fear and withdrawal. There seems to have been the hope that by limiting the freedom of action of our own appropriate chief representative in foreign relations we could achieve some security from the great international problems which press upon us. I regard this as a philosophy of frustration and despair. One would be grossly irresponsible were he to attempt to minimize the difficulties of the international community, but I consider it equally bad, if not worse, to embrace the psychology of escape.

The Bricker Resolution approved by the Senate Judiciary Committee in June, 1953, was a curious distortion of nationalism. Section 2 of that proposal contained the notorious "which clause." The entire section consisted of one sentence, but a sentence so sweeping in its effect upon our constitutional system that were it to become a part of the Constitution it would not only alter the distribution and balance of powers in the federal government but would also modify greatly the relation of the national government to the states. The section provided that "a treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty."

This language would bring about three major changes. It would put an end entirely to self-executing treaties, that is, treaties which have the

force of domestic law without the aid of implementing legislation. Existing safeguards are the political responsibility of the President, the requirement that the Senate give its advice and consent in treaty making, and the power of Congress to override by later statute the domestic-law effect of any treaty. The quoted proposal would require implementing legislation in every case of a treaty designed to have a domestic-law effect. This would amount to a major shift of authority in the conduct of foreign relations from the executive to the legislative branch.

There would be a significant change in procedure. Any treaty subject to the section would be negotiated by the President and approved by the Senate, as in the past, but implementing legislation would then have to proceed through both houses to the desk of the President. This would mean two rounds in the Senate, the first by two-thirds vote of those present and the second by majority vote.

Finally, and most significantly, the section would leave the United States without power to give the force of domestic law to treaties which, although concerned with matters appropriate for treaty negotiation, dealt with affairs beyond the ordinary legislative power of Congress. This would be an abdication of part of our national sovereignty, for the United States would be powerless

to give vitality to treaties on important matters within the proper scope of treaty action. In simpler, more direct terms, there would be no power in the federal government to do what we always have done, and that with singular freedom from abuse, that is, make a treaty overriding state law regarding subjects which in a domestic-law sense are state or local in character.

The founding fathers and those charged with the conduct of our foreign affairs during all the intervening years since the birth of the republic appear to have held the belief that, while in domestic affairs we have a well-integrated federal system, in foreign affairs we are one nation capable of unitary action through the national government.[3] Not so the proponents of the Bricker Resolution. They would protect us against ourselves and the hazards of a troubled world by limiting our own national sovereignty.

This was the key section of a proposal which occupied five weeks of debate in the Senate during the second session of the Eighty-fourth Congress. It must be said for the good sense of the Senate that the second section of the resolution was practically in limbo as the debate began; it had already lost in the forum of public discussion and debate.

Public debate is not simply wholesome—it is vital in a democratic system. It stands out in marked and healthy contrast with totalitarian con-

formity. Thus it doubtless has been best that proposals to limit further the treaty power have occupied our attention as much as they have. It is a little difficult, at the same time, to be patient about extended debate of proposals with so little basis in experience and so little rational support as the "which clause" and some of the other provisions put forward with it. From the standpoint of those of us who have been actively opposing the treaty-power limitation movement, it has been a case of expending precious time and effort merely to hold the line against the threat of dangerous retreat. If it had to be done, it had to be done, but one can wish that we might minimize such diversions from the difficult domestic and international problems which so urgently demand our constructive, positive action.

Another unhappy example of exaggerated nationalism in this country is the McCarran-Walter Immigration and Nationality Act.[4] This measure is simply fraught with provisions charged with animus against aliens. It perpetuates the old national-origins quota system which established quotas based on the national origins of our population as of 1920, exclusive of Negroes, American Indians, and other nonwhite people.[5] This is an inherently discriminatory policy since it ties the alien's chances of obtaining American citizenship to the arbitrary factor of the extent of representa-

tion of his national group in the American populace of 1920. It fails to take into account the national origins of the present population. Its design was to provide a large quota for favored Northern and Western European countries and a relatively small one for countries of Southern and Eastern Europe. Its effect has been to bring in a fraction of the quota from the former areas and to keep the emigration flow from the latter areas far below the demand. The old law favored the peoples of this hemisphere by not applying the quota system to them. It made persons of Asian ancestry entirely ineligible for admission as immigrants. The McCarran-Walter Act modifies this harsh discrimination against Asians only slightly. For example, all persons of Chinese ancestry, wherever they were born are admitted on a tiny quota of 105.

The McCarran-Walter Act makes no appropriate provision for the admission as temporary visitors of persons whose mission is business, pleasure, the giving of lectures, participation in a scientific conference, or some similar purpose. It has been administered as if there were no sound basis for distinguishing between such visitors and persons seeking admission as immigrants who desire to establish permanent residence. The act gives our consular offices practically absolute authority over the issuance of visas; there is no provision for review or appeal. Because it makes no adequate pro-

vision for visitors, the act has been administered in such a way as to deny admission to many distinguished persons. This has been so much the case that the holding of international meetings of learned organizations in the United States has been discouraged and much ill will against this country engendered. Were we to be dealt with on a reciprocal basis, no American citizen devoted to the principles of the First Amendment would be admitted to a Fascist country like Spain even for the most innocuous tourist pursuits. Likewise, he would have no chance of admission to a socialist country like Sweden.

There are provisions in the present act which tend to make naturalized citizens a group enjoying only second-class citizenship. The act goes so far as to provide that, with certain exceptions, naturalized citizens are expatriated if they return to and remain in their native land for three years or live anywhere abroad for five years. Native-born citizens are subject to no such risk.

The McCarran-Walter Act eliminated the statutory limitation on deportation proceedings, with the result that one may now be deported because of conduct which took place many years earlier. Another strikingly harsh deportation provision of the statute is a clause which requires the discontinuation of the issuance of immigration visas to nationals, citizens, subjects, or residents of

any country which either refuses to accept or delays acceptance of one of its nationals whom we wish to deport. What makes this provision particularly objectionable is its application to any person born in the non-co-operating country, even though at the present time he may be living elsewhere and be completely out of sympathy with the policies of its government.

These are but illustrations of the provincial and hostile philosophy which permeates the immigration and naturalization law of this country as it now stands. In refreshing contrast is the report of the Commission on Immigration and Naturalization appointed by President Truman in 1952.[6] Its very title, "Whom We Shall Welcome," is the key to the difference in approach. It rejects discrimination and puts forward proposed policies based essentially upon the belief that "America was founded upon the principle that all men are created equal, that differences of race, color, religion, or national origin should not be used to deny equal treatment or equal opportunity." Like the Declaration of Independence, this proposition amounts to the expression of a ruggedly strong moral position.

I can report with some satisfaction that I had a share in drafting a bill, the object of which is thorough revision of the McCarran-Walter Act, largely along the lines projected by the President's

commission. This measure, identified as S.2585, was introduced in the closing days of the first session of the Eighty-third Congress.[7] It has since been introduced in the House.[8] Its immediate prospects are bleak. In the long view, however, anything so out of harmony with traditional American values as the McCarran-Walter Act must give way.

Americans are traditionally and characteristically outgoing, courageous people with a grand sense of humor. These qualities, I suggest, will prevail and will sustain our government in its role of leadership in the international community despite the ceaseless chatter of the prophets of distrust, confusion, and withdrawal.

Nationalism is a state of mind, a relatively modern product of historical forces. The group consciousness of man focuses upon a great variety of group associations, many of which conform to this or that manifestation of community life. Significantly, we find in nationalism the expression of supreme group loyalty. An individual may have ties to many groups, but it is the nation which demands his greatest loyalty.

The more extreme expression of nationalism tends to deify national sovereignty as an ultimate value. One is struck by its similarity to "statism," with its stress upon the asserted supreme importance of the state. This kind of thinking erects

an artifical antithesis between nationalism and internationalism, an antithesis not compatible with an adequate concept of community.

That nationalism is more a product of historical forces than a strictly rational development seems clear. Nationalism exists even though a particular national group may lack linguistic cohesion, ethnological unity, geographical unity in the sense of occupying a compact regional habitat, and economic cohesion. It is obvious that nationalism exists without the basic cohesive force in human experience which characterizes the home and the small community where one lives. This is very significant since it clearly suggests that very strong loyalties can be developed independently of the actual range of experience of the individual citizen.

In his penetrating study entitled *The Idea of Nationalism,*[9] Hans Kohn has pointed up the problem presented to our time by the strength of nationalism in a world characterized by the interdependence "of all nationalities on a shrinking earth." After suggesting that the conditions of our time may lead to supranational communities with sufficient cohesion to deserve the name, he adds:

> Such an extension of solidarity, should it come, will arise only as the result of a struggle of unprecedented dimensions. For national-

ism represents "vested interests," not only political and economic but also intellectual and emotional, of an intensity and extent shown by no previous idea. In the face of the omnipotence of nationality, humanity seems a distant idea, a pale theory or a poetic dream, through which the red blood of life does not pulsate. And so it is. But at one time in history the French or the German nation was also nothing more than a distant idea. Historical forces, amid great struggles and convulsions lasting for a long time, brought these ideas to life. An organization of mankind was a Utopia in the eighteenth century; the stage of development of state and economy, of technique and communication, was then in no way adequate to the task. It is different today. At present, nationalism—at its beginning a great inspiration, widening and deepening the understanding of man, the feeling of solidarity, the autonomous dignity of the masses—seems unable to cope, politically and emotionally, with the new situation. Once it increased individual liberty and happiness; now it undermines them and subjects them to the exigencies of its continued existence, which seems no longer justified. Once it was a great force of life, spurring on the evolution of mankind; now it may become a dead weight upon the march of humanity.[10]

One of the obvious criticisms of the movement for some sort of world political organization with much greater central authority than exists in the United Nations has been that there are not the requisite cohesive forces to bind us together in a single world community. It is certainly true that the disparate elements are far more conspicuous than strong factors of common interest and common sympathy. At the same time there is at least one powerful binding force which has been immensely strengthened by the consciousness of the threat of the new forms of military attack. Man's desire for security has been a powerful cohesive community influence from the very beginning of human society. Primitive men banded together for security against external dangers. In medieval times the manorial establishment was a community unit bound together in part by the need of co-operation against external dangers. Today we are faced with a situation which is entirely new in man's experience. The only community base which is adequate for the making of common cause against the threat of the A-bomb and the H-bomb is the world community. Put differently but still in adequate perspective, the danger is now an internal danger since it hovers over all men and cannot be walled out.

I am not saying these things by way of encouraging an internationalistic outlook based on fear. I am simply recognizing that one of man's

important needs is security, or at least a sense of security, and that there is certainly supreme occasion now for a calm recognition of the fact that the danger to which I have referred is one which affects all men and should make us aware if anything can of our common humanity.

Grenville Clark, one of our ablest and most earnest students of the problem of disarmament and peace under world law, has put forward proposals, with Professor Louis Sohn of the Harvard law faculty, for revision of the United Nations Charter with the observation that disarmament and genuine peace are now a practical prospect.[11] "The reason for this conclusion," he writes, "is mankind's progressive mastery over the means of mass suicide. As a matter of self-preservation, 'this progress' is producing new and powerful motives for disarmament in a world governed by law."[12]

What we are really faced with is the greatest test of man's capacity for co-operation. I do not see how we could have a much more compelling demonstration of our interdependence both as individuals and groups operating under political forms. We are squarely and urgently confronted with the question whether we can achieve the requisite quality and scope of co-operation to meet the world-wide problem presented by the new instruments of military action.

At the present time, by reason of the extra-

ordinary difficulty of getting on common ground with the Russians, we are talking in terms of maintaining a superior relative position with respect to the new forms of warfare. I am not suggesting that we have any feasible choice in the immediate short-term view. I do say, however, with emphasis, that historic notions of maintaining some sort of peace and stability in the world through the equilibrium produced by a balance of powers is totally inappropriate to the new conditions in the long view. I repeat that the current danger, viewed in an adequate community context, is not external; it is internal, just as dangers we control by police action in a municipality are internal. To me, this means that we must develop a social and political organization on a world footing which is capable of the requisite policing.

When we reflect upon all the vagaries of human character and the complexities of society the world over, the difficulties of our task of establishing a political and social order capable of dealing with the problems I have been discussing are enough to cast in sober mind the most sanguine among us, but there it is, and I, frankly, see no acceptable choice, speaking again in the long view and the not too long view at that.

Our problem of international integration is seriously aggravated by the uneven stages of economic, social, and political development of peo-

ples the world over. This unevenness is assuredly no catalyst. In many parts of the world, notably Africa, Asia, and the Middle East, there are peoples whose experience in these three respects has not been as favored as ours, for example, and who are far more preoccupied with attaining national independence than with the larger and, to them, external problems with which I am now concerned. Their zeal for independence has inspired what I regard as a very exaggerated nationalistic spirit. Stated perhaps oversimply, the pressing problem of the Western nations in relation to this situation is the giving of these peoples a sense of assurance of their group integrity at the same time that an interest on their part in international cooperation is nurtured. Put differently, the question is whether or not we can telescope the otherwise long process of moving from a colonial or dependent status through the nationalistic stage to an outlook strongly favorable to international cooperation.

I see two major lines of approach here, both of which are important. The first is a program of economic and technical aid which will assist the peoples concerned in accelerating the development of their economy and their institutions. President Truman embraced this concept with his Point Four program, and the present administration is carrying on along the same broad line

through what is now known as the Foreign Operations Administration.[13] I think that this type of assistance is vital to the rapid development and the stability of the nations which are befriended. The second item is, of course, the extremely complicated business of moving through political channels to bring about recognition of the group integrity, or autonomy, of the peoples affected. This requires extraordinary tact and firmness in the diplomatic realm. It is one of the greatest responsibilities of our President and the Department of State.

When we speak of the international community we are again employing very general terms; the plural would be more exact. There are, to be sure, international communities made up of various regions of the world and identified by one or more common interests and purposes. The degree of regional integration achieved will be largely affected by the cohesive strength of these common elements.

The United Nations Charter gives some encouragement to regional action in the international sense. Article 52 expressly declares that the Charter does not preclude "the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements

or agencies and their activities are consistent with the purposes and principles of the United Nations." There is hortatory language in the same article designed to encourage pacific settlement of "local disputes" through such regional arrangements or by such regional agencies.

On the North American continent, Canada and the United States present an interesting example of regionalism. There exists a very striking pattern of regional unity without close political ties in any formal sense. Perhaps nowhere else in the world is the boundary between independent nations more indistinct. We are so much of the same family, as it were, that we are a very real regional community in which internal relations are governed by co-operation more meaningful than any formal political integration.

There are times, of course, when specially organized teamwork between the United States and Canada is evidenced. Notable examples have been our co-operation in World War II, in Korea, and in arctic defense measures. Now we have in prospect co-operation to develop the St. Lawrence Seaway.

While we have various agencies of co-operation with other nations in this hemisphere, international community integration with them has never existed except in the defensive sense of the Monroe Doctrine. The current manifestation of

that integrative factor is the move to make common cause against communist infiltration, a move which, by the way, is in some contrast with our handling of the "wetback" problem along the Mexican border. There, a loose policing, to the advantage of those interested in cheap agricultural labor, has made physical entry indifferently easy.

Elsewhere in the world, significant programs tending toward international regional integration have been undertaken. Of unusual interest is the conception of a European community which, in the language of the directorate of information of the Council of Europe, would have "no geographical frontiers in Europe save those where respect for political democracy and individual liberty ceases."[14] The Council of Europe and the European Coal and Steel Community are two related political developments which give concrete, albeit limited, expression to that larger community concept.

The Council of Europe is the creature of a so-called statute signed on behalf of ten European nations on May 5, 1949.[15] The member states, now fourteen in number, are Belgium, Denmark, Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Turkey, and the United Kingdom. As articulated in the statute, "The aim of the Council of Europe is to achieve a greater unity

between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress." The statute expressly excludes matters relating to national defense from the scope of the council.

The seat of the council is Strasbourg, where there has already been erected an impressive hall or headquarters which bears the symbolical title "House of Europe."

The council has two principal organs, a Committee of Ministers and a Consultative Assembly. The latter, a body of some 130 or more members, is representative of the people of the member nations. In practice, the members have been selected from the parliamentary bodies of the member states. The assembly has no legislative or other power of decision; it is strictly an advisory and deliberative body.

The Committee of Ministers, with one representative of the government of each member state and thus representative of the states as such, is the real power in the council. It has authority to decide all matters relating to the internal organization of the council. Only the committee can conclude agreements or conventions and it is the organ which makes recommendations to governments of member states.

In 1950 there emerged from the assembly a

proposal to make the Council of Europe a genuine European political authority with limited functions but live powers. The suggestion did not gain approval in the Committee of Ministers. A narrower assembly proposal, considered to have some promise in the promoting of European integration, did gain the blessing of the ministers. It was proposed that member nations be encouraged to forge special organic links by jointly establishing specialized authorities. A specialized authority was defined in an assembly committee report as "an institution upon which, or upon certain organs of which, the participating states confer definite powers within a clearly specified field for the purpose of reaching a solution to problems of common concern or of taking action in the common interest."[16] How familiar this sounds after our discussion of the *ad hoc* agency as employed to meet local and regional problems in this country!

At least one significant specialized authority has been created. I refer, of course, to the European Coal and Steel Community, which is the result of the adoption of the famous Schuman plan put forward by Foreign Minister Robert Schuman of France. What makes it the more notable is that it involves some limitation of national sovereignty by giving an independent supranational institution certain governmental powers with respect to the production and marketing of

coal and steel. This authority is the product of a treaty signed on April 18, 1951. The signatory nations are Belgium, France, Federal Republic of Germany, Italy, Luxembourg, and the Netherlands.[17]

There was signed along with the organic treaty a protocol on the relation between the European Coal and Steel Community and the Council of Europe designed to promote a close relationship. This is important. It was undoubtedly in the thinking which led to this protocol that close ties between specialized authorities and the council were needed to minimize the hazards of fragmentation to the mission of European political integration. The situation is in sharp contrast with internal regionalism in this country. We already have continental integration to the extent of our national boundaries, and the role of regional agencies is to fit organization and authority to the intermediate community for problems of that scope. There is not even any need of developing general-function units of government at the intermediate regional level; the problems of adjustment in the federal system are more than narrowly interstitial but they do not carry us that far.

In Europe, however, specialized authorities, if greatly proliferated, could conceivably aggravate the problem of effecting European union. One movement has been to make the six nations in the

Coal and Steel Community the nucleus of European political union.

It can, of course, be said of the Council of Europe that its assembly is a mere debating society with no power of decision. In contrast with this are the dramatic claims made for the assembly by the council's directorate of information. The directorate contends that the very existence of a permanent democratic political institution on a European scale was what made the European Coal and Steel Community possible. "For," it is said, "the Council of Europe constitutes a revolution on a par with the grant climacterics of history. The past tells its story of alliances and fortuitous combinations linking the nations of Europe. Today a *permanent European institution* exists—a factor which has never before been known in the life of the Continent."[18]

In very marked contrast with the movement for further treaty-power limitation in America is the interest many people are taking in positive internationalism in the problem of effecting sufficient integration of the world community to assure disarmament and peace. It may be recalled that under Article 109 of the United Nations Charter the question of holding a conference to subject the Charter to re-examination must be put to a vote in 1955. The requisite vote to require convening of the conference is a majority of the

member nations together with any seven of the eleven members of the Security Council. In the meantime, the subject of possible revision invites thoughtful consideration the world over. I consider this a very suitable occasion to discuss the subject.

My own independent study and reflection have not been such as to generate a coherent set of independent proposals. I shall, accordingly, employ as a framework for discussion the principal suggestions which have been put forward by two very able legal scholars after years of study in close collaboration. I refer to Grenville Clark, formerly a senior partner in the great Root firm of New York City, and Louis B. Sohn of the faculty of the Harvard Law School. They have prepared detailed proposals for revision of the United Nations Charter which merit our attention.[19]

They begin, as I have already done in the course of this lecture, by recognizing that the only adequate base for international co-operation to control armament and establish the condition of peace is the entire world. Thus they propose that the UN be converted into a federation of the nations of the world in which membership would be compulsory. National sovereignty would be preserved except as powers were shifted to the UN or prohibited by the Charter to member nations. The Charter would recognize that the member nations would all have equal rights in law.

We are not told how Russia, for example, could be brought into such a framework. Nor shall I undertake that difficult assignment. I do say that we have gained much once we have put the problem in proper perspective. I do not despair of persuading even the men of the Soviet both that we shall not bow to their methods and that all will be the losers and none the gainers by the long continuance of the present arms race.

Clark and Sohn have proposed steps which would make the UN a genuine world governmental unit. We are accustomed to classifying international law as public and private. In the former category we place the law of nations in the sense of the doctrinal and other material characterized as law which bears on their relations with each other. Private international law now denotes conflict of laws with special reference to problems involving the application of the private law of one nation or another to private jural relations. The proposal is that all the people of the world be citizens of the United Nations as well as of any nation in which they hold citizenship, and that the UN General Assembly have authority to legislate, within its limited sphere, with binding effect on individuals as well as member states. One notes in passing a gap in this plan; it does not provide for the stateless individual, and there are many in this category.

Is what these gentlemen propose utterly vision-

ary? Are we so incapable of the requisite perspective and capacity for co-operation that they must be described as dwelling in the realm of fantasy? This is a particularly bad occasion for dogmatism. I simply suggest that we are put to dreadfully difficult choices which require a relative evaluation. Despite a keen sensitivity to the political immaturity of man, one is aware that we must face the problems of international political organization. Inaction is one approach to the problem, but it is stultifying to the human spirit and constitutes an abdication of initiative to others. In brief, time is short and I see no satisfactory alternative to a world-community approach. This I say without embracing any specific plan of world organization for limited world government.

Clark and Sohn would reconstitute the UN General Assembly as a genuine unicameral legislative body with representation by nation based on population but with a maximum of thirty representatives for any nation. Their total membership would run a little over 400. Representatives would vote as individuals, not as national delegations, and, on important matters, the required majority would be a majority of the full membership. Legislative power would extend to implementation of a plan for general and complete disarmament by member nations; provision and government of the UN military forces needed for police

purposes; enactment of tax laws and laws providing for the borrowing of money, both for the limited purposes of the UN; enactment of laws relating to sanctions appropriate for application to nations not complying with the Charter or laws passed pursuant to it; and enactment of laws defining offenses by individuals, providing for apprehension of persons accused, establishing tribunals for the trial of individuals, and providing means for the enforcement of penalties. This makes the more plain the design to make the UN a government capable of acting directly on individuals as distinguished from member nations.

What is put forward as taxing power as distinguished from a mere system of assessing governments of member nations would not actually be full-fledged, independent authority to tax, since collection would be the responsibility of the tax-collection agencies of the member nations. If the UN government is not to be financially dependent it would need the ultimate authority to do its own tax collecting even though there were no expectation of using it except as a matter of necessity.

It will be seen that no provision is made for UN legislative power with respect to economic or social matters. The object is to provide authority adequate to the disarmament and peace function.

In the stead of the Security Council the Clark-Sohn plan calls for an Executive Council consist-

ing of fifteen members of the General Assembly and standing in relation to the latter much as does the British cabinet with respect to Parliament. This body would be charged with the responsibility for enforcement of disarmament provisions, but the primary responsibility for maintaining international peace would rest upon the General Assembly, a burden now imposed upon the Security Council. Each member of the Executive Council would be a national of a different member nation; each of the six largest nations would be guaranteed a member. The so-called veto power now held by each of the five permanent members of the Security Council would be abolished, and the governing rule would be that decisions of the Executive Council would be made by the affirmative vote of eleven members.

These are important changes in keeping with the general objective of greater international integration. At some stage the veto must be revoked; it is incompatible with the very principle of superior authority of the international agency in its proper sphere, a principle essential to the effectiveness of the agency.

A necessary concomitant of general disarmament is appropriate machinery for and encouragement of the pacific settlement of international disputes. The Clark-Sohn proposal retains the existing Charter exhortation to member nations to

employ negotiation, conciliation, mediation, arbitration, or other peaceful means of their own choice. A notable innovation is the proposal that both the General Assembly and the Executive Council be empowered to require submission of a dispute to the International Court of Justice upon its own finding that the dispute endangers international peace and security. This is designed to force the disputant states to act voluntarily, as it were!

An interesting part of this proposal is the suggestion that there be a separate court, called the World Equity Tribunal, which would sit on disputes not exclusively of a legal nature. The tribunal would not have power of decision but would report its recommendations to the General Assembly. That body would have no definite legal means of enforcing compliance; its best recourse would be appeal to world opinion.

A government charged with keeping the peace requires a police force. The Clark-Sohn plan would give the UN what it terms a UN Peace Force supposedly adequate for anything short of a major emergency. To cope with a situation of the latter nature the General Assembly would have to direct member nations to raise for UN command armed forces designated the UN Reserve. Military command would be headed by a Military Staff Committee composed entirely of nationals from

other than the six nations with the largest representation in the UN.

Perhaps it has been of some perspective value, at least, to present in major outline a coherent plan shaped by others for political organization of the world community. I do not embrace it in all its features; as a matter of fact, I do not have what I would consider mature opinions on many of the sub-proposals. I am definitely in sympathy with its general thrust. Peace in the appropriate community context is an internal problem. Political organization to establish the military conditions of peace by disarmament and the encouragement of the more fundamental economic, social, and political conditions of peace by other means must be as wide as the community. This is but the ultimate application of the proposition we have applied at the metropolitan and American regional levels—governmental arrangements should be fitted to the actual problem and service areas, or, put a little differently, the political approach to human problems should be made on a basis as broad as the community affected.

A Larger Concept of Community

IF I HAVE NOT BEEN ABLE, up to this point, to impart the "gleam" I think I see, no summary will save the day. Lest, however, I come too abruptly to an end, I will here rephrase two or three core ideas.

In a world in which individuals and groups are extremely interdependent, the integrity of the individual can be assured compatibility with the advancement of group interests—there can be genuine unity in diversity—only if human affairs are organized in adequate community contexts measured by the reach of common interests and problems. Group loyalties are powerful forces supporting co-operative action but they tend to bind beyond their proper spheres. This demands flexibility in our thinking about governmental organization and jurisdiction. It means that at the local level we must gain a larger concept of community adequate for contemporary metropolitanism, that at the domestic regional level we must embrace a conception adequate for the intermediate zone between state and nation, and that at the inter-

national level we must see the international community in as wide perspective as the need for effective co-operative action. It is sheer escapism to seek to avoid the problems and responsibilities of the larger community by withdrawal into the lesser one. The challenge of our times asks far more of us. I like to think that as a people we can muster the vision and the courage to meet the challenge.

Notes

I

THE LOCAL COMMUNITY

1. Flora Realty & Investment Co. v. City of Ladue, 362 Mo. 1025, 246 S.W. 2d 771 (1952); app. dis'd 344 U. S. 802 (1952). In Fischer v. Township of Bedminster, 11 N. J. 194, 93 A. 2d 378 (1952), a five-acre minimum in a rural township was upheld.
2. Medinger Appeal, 377 Pa. 217, 104 A. 2d 118 (1954).
3. See ROBERT L. MORLAN, INTERGOVERNMENTAL RELATIONS IN EDUCATION, c. 1 (Intergovernmental Relations in the United States, Research Monograph Number 3, 1950).
4. The trend in the case of public health has not been as strong as many would like. An important influence in that direction is the United States Public Health Service.
5. By an act signed February 7, 1955, Congress further extended the time for filing a final report to June 30, 1955. P.L. 5, 84th Cong., 1st Sess.
6. Borough of Cresskill v. Borough of Dumont, 15 N. J. 238, 104 A. 2d 441 (1954).
7. 60 STAT. 812, 842, 844 (1946).
8. James Stewart & Co. v. Sadrakula, 309 U. S. 94 (1940).
9. Chap. 11-A of the Consolidated Laws, as amended.
10. New Jersey Const., Art. IV, § VII, par. 11.
11. New Jersey Stat. Ann. 40: 69A-1-210 (1950).
12. MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE, 13 (Am. Mun. Ass'n. 1953).
13. See the Tennessee Valley Authority Act, 48 STAT. 58, 60-61 (1933).
14. Colo. Const. Art. V, § 35; Pa. Const. Art. III, § 20.
15. See Ralph F. Fuchs, *Regional Agencies for Metropolitan Areas,* 22 WASHINGTON UNIVERSITY LAW QUARTERLY 64 (1936).
16. See, for example, Kelley v. Brunswick School District, 134 Me. 414, 187 Atl. 703 (1936).
17. In the case of public-school organization and administration, there is a strong body of opinion that local school organization is an instrument for administration of a state function and as such should be independent of the basic general-function units.
18. Jefferson B. Fordham and John Dwyer, *Municipal Incorporation*

and Territorial Changes in Ohio, 13 OHIO STATE LAW JOURNAL 503, 516 *et seq.* (1952).

19. See, for example, N. Y. Const. Art. 9, § 14, which gives the voters in an area proposed to be annexed to a city an unequivocal veto.
20. Fordham and Dwyer, *op. cit.,* 503 *et seq.*
21. City of Houston v. Magnolia Park, 276 S.W. 685 (1925).
22. Georgia Laws 1951, No. 345.
23. This was achieved under a special constitutional amendment adopted in 1946. La. Const. Art. 14, § 3 (a).
24. See the 1951 City-County Consolidation Amendment, Pa. Const. Art. 14, § 8, and Commonwealth ex rel. Truscott v. City of Philadelphia, 380 Pa. 367, 111 A. 2d 136 (1955); Clark v. Meade, 377 Pa. 150, 104 A. 2d 165 (1954); Lennox v. Clark, 372 Pa. 355, 93 A. 2d 834 (1953); Carrow v. City of Philadelphia, 371 Pa. 255, 89 A. 2d 496 (1952).
25. This is not spelled out in the constitution, but the pattern emerges from various provisions for courts, clerks of courts, commonwealth's attorneys, and commissioners of revenues in cities.
26. See particularly Henrico County v. City of Richmond, 177 Va. 754, 15 S.E. 2d 309 (1941).
27. In this connection it is of interest that the Virginia annexation law was amended in 1938 to forbid municipal expansion which would reduce a county to less than sixty square miles. The act was upheld in City of Newport News v. Elizabeth City County, 189 Va. 825, 55 S.E. 2d 56 (1949). If it were easy to modify the county configuration, the problem considered here might be met by having contiguous counties assimilate the rural fragments of the reduced county. This is both legally and politically out of the question, however. In Virginia, as in many other states, county consolidation is subject to local referendum. Va. Const. § 61. There are strong political and other attachments, moreover, to the present pattern.
28. Stat. of Ontario 1953, c. 73.
29. In a particular metropolitan area some of the governmental units in the urban periphery may be so numerous and many may be so small and artificial in territorial base that consolidation into fewer constituent units would be desirable.
30. Library functions might be divided. Certainly, however, provision of a major reference library and reference services should be a metropolitan unit responsibility. Likewise, lesser units could hardly be expected to perform library extension services adequately.

II

THE REGIONAL COMMUNITY

1. See FREDERICK L. BIRD, A STUDY OF THE PORT OF NEW YORK AUTHORITY (1949) *passim*.
2. The terms of the compact are set forth in the Congressional act of consent. See 64 STAT. 568, 569, (1950).
3. FREDERICK L. ZIMMERMAN and MITCHELL WENDELL, THE INTERSTATE COMPACT SINCE 1925 126 (1951).
4. 48 STAT. 1008 (1934).
5. 53 STAT. 1121 (1939).
6. This is obvious regarding uniform laws. The Uniform Reciprocal Enforcement of Support Act is an example of a measure which embodies both uniformity and reciprocity. It has been adopted in practically all the states in order to provide for cooperative reciprocal enforcement of support of persons who leave their home states leaving dependents in need.
7. For bridges, see 33 U.S.C.A. § 401. Since New York would have no jurisdiction across the state line, it is obvious that it could not act in the adjoining state without the consent of the latter.
8. This scarcely bespeaks documentation. The so-called white slave traffic provisions of the criminal code afford an example of a law applicable to employment of aircraft in interstate flight for anti-social purposes, 18 U.S.C.A. § 2421.
9. Section 176 (a) of the Air Commerce Act asserts exclusive national sovereignty of the United States of America in the air space above the United States. This, for present purposes, merely puts the air space on a parity with the land and water surfaces for purposes of national sovereignty and has no special significance to criminal jurisdiction. 49 U.S.C.A. 176 (a) (1953). The problem of state jurisdiction might be approached in terms of pooled jurisdiction of all states traversed in a single flight. Might a wrong done on such a flight be made, by compact, a crime against each of the states traversed?
10. THE BOOK OF THE STATES 1954-55, 3.
11. *Id.*, 3 and 4.
12. U. S. Const., Art. 1, § 10, cl. 1 and cl. 3.
13. 54 STAT. 752, 753 (1940).
14. See the discussion of "inflexibility" in VINCENT V. THURSBY, INTERSTATE COOPERATION, A STUDY OF THE INTERSTATE COMPACT 13 (1953).
15. Albert S. Abel, *Ohio Valley Panorama*, 54 WEST VIRGINIA LAW REVIEW 186, 267 (1952).
16. 341 U. S. 22 (1951).
17. Felix Frankfurter and James M. Landis, *The Compact Clause of*

the Constitution—A Study in Interstate Adjustments, 34 YALE LAW JOURNAL 685 (1925).

18. Jefferson Branch Bank v. Skelly, 1 Black 436, 443 (1862).
19. Municipal Law Service Letter for May, 1951.
20. See, for example, the New York General City Law § 32 *et seq.;* 20 N. Y. Cons. Laws Ann. § 32 *et seq.* (McKinney, 1951).
21. LAND AND WATER, THE REPORT OF THE MISSOURI BASIN SURVEY COMMISSION 8, 264 *et seq.* (1953).
22. This statement was made in April, 1954, and the bills to which reference was made were H. R. 6894 and H. R. 7439, 83rd Cong., 2nd. Sess. Neither was enacted.
23. This was *obiter dictum* in James v. Dravo Contracting Co., 302 U. S. 134, 148 (1937).
24. 63 STAT. 291 (1949).
25. 56 STAT. 267 (1942).
26. 63 STAT. 70 (1949).
27. 61 STAT. 419 (1947).
28. 64 STAT. 467 (1950).
29. It is common knowledge that the court announced its conclusion, in principle, in these cases on May 17, 1954. See Brown v. Board of Education of Topeka, 347 U. S. 483 (1954), and Bolling v. Sharpe, 347 U. S. 497 (1954). The court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." In view of the complexities of the problem of formulating decrees in these cases the court restored them to the docket and requested the parties to present further argument to aid the court in shaping its decrees. During the October, 1954, term further argument was heard and on May 31, 1955, final decrees were announced. The court has made implementation a lower-court responsibility by remanding the cases to the courts which originally heard them. For the guidance of those tribunals the court said, in part: "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the

transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

30. See n. 28 *supra* for reference to a voluntary modification.
31. Virginia v. West Virginia, 246 U. S. 565 (1918).
32. The clause is addressed simply to the states. U. S. Const., Art. 1, § 10, cl. 1.
33. 64 STAT. 568, 571 (1950).
34. Virginia v. Tennessee, 148 U. S. 503, 518 (1893).
35. See Thursby, *op. cit.*, 113 *et seq.*, for an account of these events.
36. See the Northeastern Forest Fire Prevention Compact, 63 STAT. 271 (1949).

III

THE INTERNATIONAL COMMUNITY

1. Signed in Paris, June 1, 1878. See 44 STAT. (Treaties) 62 (1878).
2. The three principal sections of S. J. Res. 1, 83rd Cong., 1st Sess., as reported by the Senate Committee on the Judiciary read:

SECTION 1. A provision of a treaty which conflicts with this Constitution shall not be of any force or effect.

SECTION 2. A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of a treaty.

SECTION 3. Congress shall have power to regulate all executive and other agreements with any foreign power or international organization. All such agreements shall be subject to the limitation imposed on treaties by this article.

The proposal submitted to final vote, the so-called George Resolution, read:

SECTION 1. A provision of a treaty or other international agreement which conflicts with the Constitution shall not be of any force or effect.

SECTION 2. An international agreement other than a treaty shall become effective as internal law in the United States only by an act of the Congress.

SECTION 3. On the question of advising and consenting to the

ratification of a treaty the vote shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the Journal of the Senate.

The 1955 version, S. J. Res. 1, 84th Cong., 1st Sess., reads:

SECTION 1. A provision of a treaty or other international agreement which conflicts with this Constitution, or which is not made in pursuance thereof, shall not be the supreme law of the land nor be of any force or effect.

SECTION 2. A treaty or other international agreement shall become effective as internal law in the United States only through legislation valid in the absence of international agreement.

SECTION 3. On the question of advising and consenting to the ratification of a treaty, the vote shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the Journal of the Senate.

3. Ware v. Hylton, 3 Dallas 199 (1796).
4. 66 STAT. 163 (1952).
5. 43 STAT. 153, 159 (1924).
6. WHOM WE SHALL WELCOME, Report of the President's Commission on Immigration and Naturalization, Philip B. Perlman, Chairman (January 1, 1953).
7. 83rd Cong., 1st Sess.; reintroduced as S.1206, 84th Cong., 1st Sess. (1955).
8. H. R. 636, 84th Cong., 1st Sess. (1955).
9. New York, The Macmillan Company (fifth printing, 1951).
10. THE IDEA OF NATIONALISM 21-22.
11. PEACE THROUGH DISARMAMENT AND CHARTER REVISION (1953).
12. *Ibid.*, i.
13. This agency has been supplanted by the International Cooperation Administration.
14. THE COUNCIL OF EUROPE AND THE SCHUMAN PLAN 2 (1952).
15. The statute was signed as a single original document, which is deposited in the Archives of the Government of the United Kingdom.
16. CONCISE HANDBOOK OF THE COUNCIL OF EUROPE 30 (1951).
17. A notable development since this lecture was delivered is the association of the United Kingdom with the Coal and Steel Community. The agreement of association was signed in late December, 1954.
18. THE COUNCIL OF EUROPE AND THE SCHUMAN PLAN 2 (1952). The 1955 rejection by France of a European defense treaty has been a setback to the movement for European political integration. It

is noteworthy that Jean Monnet has given up the chairmanship of the High Authority of the European Coal and Steel Community in order to devote his energies to the cause of European unity. The six nations which are members of the European Coal and Steel Community are the nucleus of a potential United States of Europe.

19. PEACE THROUGH DISARMAMENT AND CHARTER REVISION (1953).